CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 133.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANTS,

vs.

THE VICKSBURG WATER WORKS COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED DECEMBER 8, 1904.

(19,551.)

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1 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE MAYOR & ALDERMEN OF THE CITY OF Vicksburg, Defendants, Appellant-,
versus
VICKSBURG WATER WORKS COMPANY, Complainant, Appellee. } No. 41. Equity.

On Appeal to the United — Circuit Court of Appeals for the Fifth Circuit.

Transcript of Record.

Caption.

Be it remembered, that at a regular term of the circuit court of the United States in the fifth circuit thereof, and in and for the southern district of Mississippi, at Jackson, begun and holden at Jackson, Mississippi, on the 2nd day of May 1904, and which term adjourned on the 18 day of May, A. D. 1904, the Honorable Henry C. Niles, United States district judge for the State of Mississippi, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY of Vicksburg, Defendant-. } No. 41. In Equity.

2 Original Bill.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant-.

To the honorable the judges of the circuit court of *of* the United States in and for the western division of the southern district of Mississippi:

Humbly complainang, your orator, The Vicksburg Water Works Company, a corporation duly organized and existing under the laws

of Mississippi, and a citizen of said State, and having its principal place of business in Vicksburg therein, brings this its bill of complaint against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

1st. And thereupon your orator, by the undersigned, its solicitors in this behalf, complains and says that, it and said defendant are organized as corporations as aforesaid and that on the 18th day of March 1886, the said city of Vicksburg, caused its charter to be amended by the legislature of the State of Mississippi, in words and figures as follows, to-wit: "to provide for the erection and maintenance of a system of water works to supply said city with water and to that end to contract with a party or parties who shall build and operate water works," whereby said city was empowered to provide and contract for a system of water works. Which said act was approved on the 18th day of March, 1886, and is set out in full in the Acts of 1886 of the Legislature of the State of Mississippi, page 695, reference to which is hereby made.

2nd. Your orator further shows that on the 19th day of November, 1886, the said city of Vicksburg received competitive bids for the best terms and conditions for the city and for the franchise rights, etc., S. R. Bullock and Company and other bidders submitting bids; and said bids or offers were referred to the mayor and aldermen of the city of Vicksburg, who thereupon made and investigation of the propositions officered by the respective competitive bidders, and according to the minutes of its proceedings on 3 — day of —— 1886, accepted the proposition of S. R. Bullock & Company, their associates, successors and assigns, as shown per Minute Book — of the proceedings of the boars of mayor and aldermen. A copy of which minutes is hereto filed and made a part hereof, and marked Exhibit "A," to this bill. And on the — day of —— 188–, the mayor and aldermen of the city of Vicksburg, pursuant to the said act of the legislature of Mississippi, duly passed and adopted an ordinance for the construction and maintenance of a system of water works, and thereby entered into a contract with said Bullock & Company therefor, a copy of which said ordinance and contract entered into between Bullock & Company, their associates, successors and assigns and defendant is hereto attached and marked Exhibit "B" and made a part hereof.

3rd. Your orator further shows that in accordance with the said contract and ordinance and as provided therein, S. R. Bullock & Company were empowered to organize or create a water works company, and to sell or assign *sell* contract and ordinance to any water works company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof.

4th. Your orator further shows that said Bullock & Company on the — day of —— 1887, chartered and organized under the laws of Mississippi, the Vicksburg Water Supply Company, a corporation, a

copy of said charter is hereto attached and marked Exhibit "C" and made a part hereof. And on the first day of March, 1887, said Bullock assigned and sold said contract to the Vicksburg Water Supply Company, now and at all times a going concern, and doing business in Vicksburg, Warren county, Mississippi. A copy of said assignment is herewith filed and marked Exhibit "D" and made a part hereof. And on the — day of —— in accordance with the terms and provisions of said contract and ordinance the said Supply Company being the assignee and *bona fide* owner of the same, and as required by the agreement therein contained, gave defendant notice, accepting the terms and conditions of said ordinance and contract, which notice is duly recorded on page — of the Minute Book, numbered — of said defendant, a copy of which notice is hereto filed and marked Exhibit "E" and made a part hereof. Said notice and acceptance of said ordinance was received and an entry thereof was made in its records, a copy of which entry is hereto attached and marked Exhibit "F" and made a part hereof.

4 5th. Your orator further shows that Bullock & Company proceeded to build and construct said water plant; as per specifications in said ordinance, and did build and complete said water works plant as specified in said ordinance, on or about the — day of —— 188–. And after inspection of said water works plant by defendant, the city, on the — day of —— 188–, the water works plant was accepted by said defendant the city, as having been completed in every respect, and having fully complied with all the provisions of said ordinance and contract in every respect.

6th. Your orator further shows that since the completion and acceptance of said water works, which is a period of about fourteen years, there has never been any complaint of any kind or character whatsoever, by word or resolution by the defendant, the city, or otherwise, that the water company had in any manner forfeited or violated the ordinance or contract with the defendant, the city; on the contrary, said defendant, the city, understood and knew that said water company was so faithful in and with *the* respect to execution of its part of the ordinance that said defendant, the city, without question, issued and paid the said water company semi-annually, the price and sum of the rental stipulated in said ordinance up to the time the city fully decided it wanted a water works of its own, which was on or about July —, 1900.

7th. Your orator further shows that heretofore on the — day of March, 1887, said supply company duly made, executed and delivered a deed of trust conveying all its franchises, ordinances and contracts, together with all other property of whatsoever kind or nature, then or thereafter acquired, to secure the payment of its issue, $250.000 of first mortgage bonds; and said deed of trust was thereupon duly recorded in said Warren county; and a copy -hereof is hereto attached marked Exhibit "X" and made a part hereof.

8th. And therefore, default having been made in the payment of interest on said bonds, the same was foreclosed on the 8th day of

August, 1900, and all the said franchises, ordinances, contracts and property conveyed in said deed were sold, pursuant to the terms of said deed of trust, to the said Vicksburg Water Works Company, which is evidenced by deed made and executed by trustee, recorded in Book — page — of the records of deeds of Warren county, Mississippi. The said Vicksburg Water Works Company is a corporation duly, organized under the laws of Mississippi, and doing
5 business in said city of Vicksburg, and the owner of said water works property and operating the same.

9th. Your orator further shows that on the 18th day of October, 1900, the said Vicksburg Water Supply Company executed a quit claim deed to the said Vicksburg Water Works Company, conveying all rights, titles and interest it might have or hereafter acquire in said water works property, franchises, ordinances and contracts; a copy of which deed is hereto attached and marked Exhibit "G" and made a part hereof.

10th. And in pursuance of the purchase by said Vicksburg Water Works Company of the said property, ordinances, franchises and contracts, the said Vicksburg Water Works Company gave the said city notice in writing of said purchase and assignment, and filed with said city its written acceptance of the terms and provisions of said ordinance; a copy of which notice and acceptance is hereto attached and marked Exhibit "H" and made a part hereof. And at the same time, said company filed with and furnished to said city, documentary evidence of its title and ownership of said franchises, ordinances, contracts and property.

11th. Your orator further shows that the said city of Vicksburg has since the completion and acceptance of the said water works as aforesaid, continuously received and used the water furnished by said water works and paid for the same during the period of about fourteen years as aforesaid without question or complaint; and said water has at all times been and is now good and wholesome for public and private use and an adequate supply for the needs of said city and its inhabitants; that said water so furnished from the time said city first received and accepted the same up to the present date is, and has at all times been, the same character and supply of water as when first received and accepted by said city by said S. R. Bullock & Company; the said Vicksburg Water Supply Company and the said Vicksburg Water Works Company; and the pressure maintained has at all times been, and is now greater than required by said ordinance and contract.

12th. And there has never been any complaint during said period of about fourteen years as to the character or quality of the water, nor as to the pressure nor as to any other matter from the said city nor any official or other notice that said water works company was not complying in every respect in accordance with said ordinance. But after said city desired to own its own water works and it was ascertained by said city that your orator, The Vicksburg
6 Water Works Company was the owner of said first mortgage bonds, and that by virtue of the sale under the said deed of

trust it would become the owner of the said water works on the 8th day of August, 1909, said city without any notice to said water works company that said city claimed said company was not complying with the terms and provisions of said ordinance and contract arbitrarily, unjustly and illegally proceeded, as hereinafter set forth, to pass and adopt an ordinance and resolution, assuming to abrogate and take away the franchises and contract rights of your orator.

13th. Your orator further shows that the said city and its officers confederating and conspiring to injure and destroy the credit of the said Vicksburg Water Works Company and to destroy the value of its property assumed to abrogate and take away the franchises and contract rights of said company while denying its (said city's) liability to pay for the water used by it as provided in said contract and ordinance, and persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

14th. Your orator further shows that the value of its property is in a large measure dependent upon its franchises and its contracts to supply said city with water, and that the value thereof is seriously impaired by the unjust and unlawful action of said city in assuming to abrogate and take away its franchises and contract rights as aforesaid.

15th. Your orator further shows that the said unlawful, unjust and illegal acts of said city and its officers are being done partly pursuant to an act of the legislature of Mississippi enacted on the 9th day of March, 1900, entitled "An act to authorize the mayor and board of aldermen of the city of Vicksburg, to issue bonds to the amount of $375.000, to purchase or construct, equip and maintain a water works system; construct and establish a sewerage system; to purchase ground for, erect and equip a city hall; construct the necessary buildings for a hospital medical college and for other purposes." Said act is contained in Acts of 1900, page 180, reference to which is hereby made, whereby said legislature assumed to annul and abrogate the aforesaid ordinance and contract said city entered into with said Bullock & Company and their assigns, in this that by reason of said ordinance and contract said
7 city has no right within the period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company, or their assigns, notwithstanding which, said act authorizes and permits said city to construct and maintain water works for said purpose, if unable to buy the water works at the arbitrary and inadequate price fixed by said legislative act, and in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the — day of —— 1900, at which it was voted by a majority of the votes cast at said election, that said city should issue its bonds in the sum of $150,000. to buy or construct water works for said city, all of which acts and doings on the part of said city and the legislature of

Mississippi, impaired the credit of said Vicksburg Water Works Company and depreciated the value of its property, and tend to disable it from carrying on its business, and to coerce it to sell its property for such arbitrary and inadequate price and cast a cloud upon its title, franchises and rights; and said act, or ordinance and resolution and each of them are in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

16th. Your orator further shows, as hereinbefore referred to, that on the 7th day of November, 1900, said city passed a resolution and ordinance assuming to abrogate and take away the franchises and contract rights of the said Vicksburg Water Works Company, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

17th. Your orator further shows that if such act of March, 1900, and said resolution and ordinance adopted on said 7th day of November, 1900, as aforesaid, are permitted to stand, they will take away one of the most valuable assets of said Vicksburg Water Works Company, which will so materially impair its value as to wreck and ruin said water works in the hands of your orator, The Vicksburg Water Works Company.

18th. Your orator further shows that heretofore during the election to be held on the question of bonding the city for water works, sewerage, etc., as aforesaid, it was deemed admissible to have appointed an advisory board in conjunction with said mayor and aldermen of the city of Vicksburg, as to the wisdom of the expenditure of said bonds; that said advisory board and mayor and
8 aldermen passed a resolution and gave a copy of same to your orator, requesting a reply. A copy of said resolution is hereto attached, marked Exhibit "J" and made a part hereof.

19th. Your orator further avers that the Vicksburg Water Works Company took possession of said water works on August 15th, 1900, and that the city election was held on December 6th, 1900, for city officers, and during the period between August 15th, and December 6th, 1900, many of the municipal office holders and seekers from the mayor of said city down dragged the water works into politics without the consent and wishes of your orator, and openly stated and published in the newspapers in the city, that if elected they would bring suit to cancel the contract with the water company, and charged that your orator had taken snap judgment on the city in buying said water works; copies of said publications are hereto attached marked Exhibits — and made a part hereof. All of which statements and publications were harmful and injurious to your orator, greatly hampering it in carrying on its business.

20th. Your orator alleges the fact to be that the incorporators of said Vicksburg Water Works Company commenced negotiations to buy the water plant in the fall of the year, 1899, and on January 5th, 1900, made a proposition in writing to buy the plant, which

date was prior to the introduction of said act in the legislature, authorizing the city to buy or construct a water works system, and your orator never knew that the city had any desire whatever to own a water works *plant* of her own at the time of such negotiations.

21st. Your orator further shows that during said municipal election, rumors of damaging effect and that were utterly false began to travel the streets of defendant, the city, and were poured into the uninformed public ear, and met great favor with the newspapers of the city having a wide and influential circulation in said city, and through their columns the papers would themselves, and also by its citizens, some of whom were candidates for office, write inflammatory and untruthful articles about your orator, all of which has given birth to an unjust public disfavor and unrighteous prejudice, which said rumors and articles have greatly injured your orator, and your orator is informed, believes and charges the fact to be that said rumors and articles were originated and circulated by officers, agents and confederates of said city, pursuant to said conspiracy and confederacy against your orator.

22nd. Your orator further shows that some time after the
9 Vicksburg Water Works Company had bought the water works plant, and after it was well known that the city wanted the water works, or one of her own, one of the leading citizens of Vicksburg, for himself and associates offered to buy the waterworks from your orator at a price exceeding $150,000, and your orator charges the fact to be that this same citizen is today one of the advisory board, and that he is acting in that capacity with said board in conjunction with the mayor and aldermen to coerce and force your orator to sell said water works at a price less than what he himself and associates offered to pay your orator.

23rd. Your orator further shows that suit was commenced by the city of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void, said ordinance or contract your orator has with the city, at the instigation of said board of mayor and aldermen and said advisory board, and in about sixty days from the filing of said suit your orator received a communication from said associates of said leading citizen to know if your orator now cared to sell the water works. Whether — not said leading citizen and associates are confederating in conjunction with said mayor & aldermen in said suit, your orator is unable to state. A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand, a copy of the bill of complaint is hereto attached and marked Exhibit "Y" and made a part hereof.

24th. Your orator further shows that on the 29th day of Feb'y, 1890, the defendant caused to be passed an act of the legislature of the State of Mississippi, entitled "To provide means for the construction of a sewerage system in the city of Vicksburg and to issue bonds

therefor," which act will be found on page 507 of the sheet acts of said body, reference to which is hereby made, and this act has never been repealed by any subsequent legislation of Mississippi.

25th. On the 9th day of March, at the instance of the defendant, the legislature of the State of Mississippi, passed an act as aforesaid, entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000. to purchase or construct, equip and maintain a water works system," etc., while said contract and ordinance entered into with said defendant, the city, was still in force, and the conditions thereof being per-
10 formed by both parties without complaint from either. Your orator charges that said act of March, 1900, is unconstitutional for many reasons, which will be shown to the court on the hearing of this cause, meaning as follows to-wit:

1st. Because it arbitrarily places the prices and value upon another's property, in which defendant has no interest.

2nd. Because the legislature of the State has by said act passed an *ex post facto* law impairing the obligations of a contract.

3rd. Because said act is in conflict with the act of 1890 page 507 providing for the construction of a sewerage system, because the acts of 1900 does not in accord*nace* with section — of the constitution of Mississippi repeal said act of 1890.

4th. Because said act of 1900 is local in character, when the provisions contained therein could be provided for by the general law.

5th. Because it abuses the credit of the city if these bonds are permitted to be issued and sold.

26th. Your orator would respectfully represent that about 1870, the defendant constructed a large underground gutter of about five feet in diameter on Washington street of defendant and through the most populous part thereof for about one half mile for the purpose of conducting away the surface water of said defendant into the Mississippi river, and which was used for that purpose solely until afterwards as aforesaid in 1887 as aforesaid the Vicksburg Water Supply Company as aforesaid, built its pumping station and intake pipe on the Mississippi river below the defendant which arranges the pumping station of your orator with reference to the mouth of this gutter so as to locate it about two miles up said river above said station. Some time after the Vicksburg Water Supply Company was put in operation, the citizens and inhabitants of defendant along or near Washington street began to connect the water closets on their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent until it has been converted into a partial sewer for said street for said water closets of said residences stores and hotels, and if defendant permits a general connection with this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said con-
11 tract and ordinance with said city, and unless the use thereof is prohibited by defendant, your orator will be compelled to

cut off and prevent the use of its water for such closet and sewer purposes by said residences, hotels and stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered.

27th. Your orator further charges that it has no adequate remedy at law for the damages which it has sustained by reason of the aforesaid conspiracy and unlawful acts of the defendant and others, and also that it has no remedy at law to enjoin and restrain a continuation by defendant of said unlawful actings and doings; and it charges that the continuance of said actings and doings will injure and damage your orator in the sum exceeding the amount of ten thousand dollars, and that the acts of defendant aforesaid have already damaged the complainant in its business in the sum exceeding said amount.

28. Your orator now especially shows that said ordinance or franchise Exhibit "B" provides that the defendant, the city shall pay to your orator semi annually to-wit; January 1st. and July 1st. of each year, the price or prices named in said ordinance for the fire hydrants as stipulated and set out therein.

29th. Your orator especially complaining shows that the defendant the city, is now refusing to pay your orator the amount due and payable on January 1st, 1901, and only offers to pay an inadequate amount or price and under specific conditions, that if accepted by your orator would commit your orator to a false position with reference to its contract with the city; that the defendant, the city, by this scheme is confederating, conspiring and endeavoring to coerce your orator to commit an act whereby the ordinance would be annulled, notwithstanding the fact that defendant has already collected from the tax payers of defendant, the full amount with which to pay this demand.

30. Your orator further shows that we have, and did offer and now offer to the defendant, the city, in writing assuring the city that the payment for said fire hydrants due on January 1st. 1901, as stipulated in said ordinance should in no wise prejudice said city in a suit or suits whatever pertaining to this matter; your orator agreed to do this, that in this way your orator would be able to maintain itself and continue to furnish water for fire protection to said city, and that we were, and are now willing to do so, but your orator especially alleges that it cannot keep up the enormous ex-

12 penses and pay fixed charges and maintain itself, and continue to deliver water for fire protection etc., unless the defendant, the city pays for the water as received and used by it. A copy of the proposition made to water committee, city attorney and board of mayor & aldermen *id* hereto attached and marked Exhibit "K," and made a part hereof.

31. Your orator further shows that the water committee (after the bill was referred back to them), called a special meeting of the board of mayor & aldermen on Feb'y 7th, 1901 and made the following report, to-wit:

"To the honorable board of mayor & aldermen :

Report of the Committee of Water Works upon the Matter of the Accounts of the Vicksburg Water Works Company Referred to It.

GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company. On the first day of October, 1900, the board of mayor & aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just and therefore have proposed to said company that we will pay them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant, which we consider a most liberal rate; it being understood however that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. M. CAUGHLIN,
W. O. SMITH,
Committee."

32. Your orator would show that said board of mayor & aldermen received and adopted the water committee's report in words and figures as follows: "That the accounts be allowed on the basis and conditions of the committee's report." Your orator respectfully shows that said report of the water committee and the adoption of the same by the board of mayor & aldermen is so worded and
13 hedged about that if your orator should accept the payment as stipulated therein, it would acknowledge thereby or break the contract, in this, the defendant, the city, reserving to itself all the rights in words and figures as follows; "It being understood however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit, neither would this payments be deemed in any way the waiver of the rights of the city in the premises" But no rights are reserved to your orator, and therefore as before stated, if partial payment was accepted under the terms and conditions specified in said committee's report and mayor & aldermen's adoption, your orator would thereby be doing an act that could and would be construed the ending or breaking of the contract.

33. Your orator now shows that it cannot accept the proffered partial payment under the terms and conditions as specified in said water committee's report and mayor & aldermen's adoption, and that unless the defendant, the city, pays your orator, your orator will be unable to maintain itself and keep up the great expenses necessary to operate such a plant, discharge fixed charges as aforesaid, and while your orator is willing and anxious to furnish water for fire protection etc., and fully carry out said contract, and have offered so to do, and now offer so to do, but as before stated if defendant, the city, continues to refuse to pay for said water on a basis that each and all rights both for your orator and defendant, the city, may be equally and equitably reserved until this honorable court can decide the case on its merits, your orator will — unable to maintain itself and furnish water for fire protection etc.,

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable, and to the end that defendant may be required to answer, but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays;

14 I. That defendant may be compelled to answer the premises, (not under oath).

II. That the defendant may be enjoined, perpetually, from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to destroy its credit and the value of its property and to coerce said complainant to sell its water works to defendant for an inadequate price, and that defendant may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, and that said act of the legislature of Mississippi, adopted on the 9th day of March, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

III. May it please your honors to grant unto your orator a writ of injunction issuing out of this honorable court, under the seal thereof, directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carry-

ing on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orator not only a writ of injunction, but furthermore a writ of *subpœna as respondendum* directed to the defendant, namely The Board of Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid); and thereby to command them upon a day certain therein named, to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet, to the end that your orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant, for all monies due it under said ordinance with 6% interest per annum from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes, or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water and that defendant be compelled to pay your orator for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand, and as may be in conformity with equity and good conscience and in accord with the practice in this honorable court as a court of equity.

And your orator will ever pray, etc.

VICKSBURG WATER WORKS COMPANY,
By S. S. HUDSON &
A. N. EDWARDS,
Its Solicitors.

STATE OF MISSISSIPPI,
Western Division of the Southern Judicial District of Mississippi, City of Vicksburg. } ss:

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer and manager of Vicksburg Water Works Company at the city of Vicksburg, Mississippi, and that the matters and facts stated in the foregoing bill of complaint of the Vicksburg Water Works Company are true, except as to such charges as are therein stated to be upon such information and belief; and

as to those he believes the said charges so made to be true; and further affiant sayeth not.

(Signed) M. O. CRUMPLER.

Sworn to and subscribed before me, the undersigned, this 13th day of February, 1901.

L. B. MOSELEY, Clerk.
C. D. BANKDS, D. C.

16 Restraining Order on the Above.

Upon complainant entering into bond in the sum of ($8000) eight thousand dollars the clerk will issue a restraining order as prayed for in the foregoing bill of complaint.

H. C. NILES, Judge.

Feb'y 14th, 1901.

EXHIBIT "A."

CITY HALL, November 12th, 1886.

A special meeting of the board of mayor and aldermen to further consider the proposition of the water works company, and to receive and entertain other proposition looking to the erection of a system of water works in our city was held on the above date.

Present: John W. Powell, mayor.

Aldermen, Kuhn, Ehrman, Rice, Anderson, Walsh, Baum and Crayton.

On motion of Alderman Baum, it was resolved that if any company or companies desiring to erect a system of water works in our city had a proposition to submit, said company or companies be requested to present their proposition.

After considerable discussion on the part of Major L. W. Magruder attorney for, and Mr. H. A. Hungerford agent for Samuel R. Bullock & Company of New York, Mr. Smedes, A. B. Pittman and Capt. Butts representing the Vicksburg Water Works Company, and Alderman Baum and other aldermen on the part of the board as to what would be the conditions — the proposition of Samuel R. Bullock & Company would be received; the Vicksburg Water Works Company and some members of the board claiming the right of said Vicksburg water works to submit another bid after the bid of Samuel R. Bullock had been received and opened, Major Magruder and Mr. Hungerford denying the right of said Vicksburg Water Works Company to submit another bid after the bid of Samuel R. Bullock & Company had been received.

On motion of Alderman Baum the resolution offered by him requesting any company or companies having bids to present for water works be requested to present them was reconsidered by the following vote:

Ayes.—Aldermen Kuhn, Ehrman, Rice and Baum.

Nays.—Walsh, Crayton and Anderson.

On motion it was resolved that the board invite bids for the construction of water works at its meeting on Monday night with the following vote:

Ayes.—Juhn, Ehrman Rice, Anderson, Walsh & Baum.

17 Nayes.—Crayton.

JOHN W. POWELL, Mayor.

OFFICE OF BIRCHETT & GILLAND, Nov. 18th, 1886.

A special meeting of the board of mayor & aldermen to receive the report of the street committee on water works was held on the above date,

Present: Honorable John W. Powell, mayor, Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi, Baum and Crayton,

Absent: Alderman Ehrman.

The street committee through its chairman, Alderman Baum, reported that after having considered the propositions of the Vicksburg Water Works Company and Samuel R. Bullock & Company of New York, they arrived at the conclusion that the latter proposition was the better of the two, and after conferring with Mr. Hungerford, agent of the said Samuel R. Bullock & Company making certain changes and modifications in the original proposition as submitted by the said S. R. Bullock & Company on November 15th, 1886, submitted as their final report an ordinance, entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" which was read the first time and under a suspension of the rules, was read the second and third time by its title, and adopted with the following vote.

Ayes.—Aldermen, Kuhn, Rice, Anderson Walsh, Demarchi and Baum.

Nays.—Alderman Crayton.

On motion it was resolved that the thanks of this board are due and hereby tendered to the street committee for the able manner — which they have settled the question of water works.

* * * * * * *

(Signed) JOHN W. POWELL, Mayor.

Exhibit "B."

An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors, and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works.

18 *Be it ordained* by the mayor and aldermen of the city of Vicksburg.

Section 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock and Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territority as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for the conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said Samuel R. Bullock & Company, their associates, successors and assigns shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares and other public places and shall cause no unnecessary obstruction of or interruption to the public travel over or upon the same or any injury to or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said Samuel R. Bullock & Company, their successors, associates and assigns, shall take every precaution to provide against danger to property life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night and after the completion of the purpose for which the said streets, alleys, public squares and other public places may be used they shall be restored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor & aldermen of said city if there was no established grade for such street at the time said mains

and pipes were laid. On failure to restore such streets, alleys,
19 public squares and other public places as aforesaid, the mayor
of the aldermen of the city of Vicksburg may on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock & Company, their associates, successors and assigns in any court having jurisdiction of the amount.

The said Samuel R. Bullock & Company, their associates, successors and assigns hereby agree to hold the mayor & aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the said system of water works shall be as follows:

Mains.—The pipe system shall consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish and shall be laid and jointed by competent mechanics, and in the best possible manner.

The streets along which it and at what points said mains shall be laid shall be first designated by the board of mayor & aldermen of the city of Vicksburg.

Hydrants.—The hydrants shall be double nozzle fire hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

The board of mayor & aldermen of the city of Vicksburg shall within thirty days (3-) from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

Gates and valves.—All necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain district- to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure
needed to supply all parts of the pipe system with an abun-
20 dant supply of water. They shall be so arranged as to be operated separately or together.

Boilers.—The boilers shal' be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

Stand pipe.—There shall be a stand pipe or a reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

Pump house.—The pumps and boiler house shall be a substantial

stone or brick building of ample size for the pumps and batteries of boilers. The smoke stack will be of brick of the size needed to operate the boilers.

Source of supply.—The water shall be taken from such point as may be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption.

SECTION 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of water works the mayor and aldermen of the city of Vicksburg hereby rent of the said Samuel R. Bullock & Company their associates, successors and assigns not less than eighty (80) double nozzle frost proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five (65.) dollars payable as aforesaid and for the remainder of said period of thirty (30) years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor & aldermen of the city of Vicksburg shall be at the annual rate of fifty ($50.) dollars for each hydrant payable as aforesaid during the unexpired period of the said original term of thirty (30) years.

21 Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

SECTION 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes and for filling public cisterns and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid to within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by said Samueal R. Bullock & Company in such place on the line of mains as the board of mayor & aldermen of the city of Vicksburg may direct.

SECTION 5. The said Samuel R. Bullock & Company, their associates, successors or assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder. Provided that such assignment shall not invalidate or effect the bond required by section seven (7) hereof and no assignment thereof shall be valid

unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the re-passage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

SECTION 6. Upon the completion of the construction of the said system of water works the said Samuel R. Bullock & Company their associates, successors and assigns shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of the works to be sufficient to throw four (4) fire streams through one hundred feet of two and one half inch hose and one inch nozzle and from four (4) different hydrants a stream not less than
22 fifty (50) feet high at the highest elevation on which any of such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 7. Within fifteen — after the day that this ordinance takes effect the said Samuel R. Bullock and Company, their associates, successors and assigns shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to be approved by said board of mayor & aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

The construction of the said system shall commence within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the *constructio-* thereof *provided however* that the time during which the said Samuel R. Bullock & Company, their associates successors or assigns are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control shall form no part of the time limited in this ordinance for the performance of any act required by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

SECTION 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penalties providing for the protection of the said works from damage, fraud or imposition.

SECTION 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of water works provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their in-
23 tention to do so, at least one year before the expiration of the said period of ten (10) years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns and the board of mayor & aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who, shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren county. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board *have* rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten (10) yea-

SECTION 10. The said Samuel R. Bullock & Company, their associates, successors and assigns shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall not be less than 500 feet — length and that one public fire hydrant shall be located on each five hundred feet or major portion thereof, and *further provided* that two thirds of the residents in the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock and Company, their associates, successors and assigns may voluntarily make such extensions from time to time as they may deem necessary.

SECTION 11. After the works are *out* in operation, if at any time the pressure gauges located at the points hereinbefore named shall indicate a pressure of less than twenty (20) pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided however, if the pressure indicated as aforesaid, shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Company, their associates successors and assigns acquired by virtue of
24 this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates, successors and assigns from temporarily shutting off the water from its said system or any portion thereof for the purpose of making re-

pairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors or assigns for the suspension of the supply of water provided the repairs or extensions are *amde* and the water turned on again without unnecessary delay. But the city shall *ne* be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained, That as a part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said water works and the property and business pretaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business pertaining to and employed in and about said system of water works, shall thereafter during each year of the balance of the period of this contract, be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars (50,000).

SECTION 13. The said Sam'l R. Bullock & Co., their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water.

SECTION 14. Be it further ordained That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Sam'l R. Bullock & Company their associates successors or assigns by virtue of the terms and conditions of this ordinance, the mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and designated as the water works tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

SECTION 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor.

Ordained this 18th day of November, 1886.

(Signed) H. J. TROWBRIDGE, City Clerk.

Approved this 19th day of November, 1886.

(Signed) JOHN W. POWELL, Mayor.

26 EXHIBIT "C."

Charter of Incorporation of the Vicksburg Water Supply Company.

Article I.

E. S. Butts, John B. Mattingly, L. W. Magruder, Clarence Delafield, and Chester R. McFarland, and such other persons as may hereafter become their associates and successors, are hereby created a body politic and corporate by virtue of chapter XXXVIII. of the Revised Code of 1880 of the State of Mississippi, and the acts of the legislature of said State, amending and supplementing the same, under the name and style of "The Vicksburg Water Supply Company."

Article II.

The domicil and principal place of business of this corporation shall be in the city of Vicksburg, in Warren county, Mississippi, but an additional branch business office may be established and maintained in the city of New York. Meetings of the board of directors may be held and this corporation may transact any of its business or affairs at either its principal place of business or at its branch business office as aforesaid.

Article III.

The purposes for which this corporation is created are to construct maintain and operate a system of works to supply the city of Vicksburg, in Warren county, Mississippi, and the vicinity and the inhabitants thereof with an adequate supply of pure and wholesome water for all public and private uses.

Article IV.

The powers to be exercised by this corporation are as follows: To have perpetual succession; to determine the manner of calling and conducting meetings; to determine the number of shares that shall entitle its members to vote and the mode of voting by proxy; to elect all necessary officers; to sue and be sued and prosecute and be prosecuted to judgment and satisfaction*g* before any court of justice in the State; to have a corporate seal; to contract and be contracted with within the limits of its corporate powers; to make charges for supplying water and to collect payment therefor at such rates and upon such terms as may be agreed upon with the consumers; to make all necessary by-laws not inconsistent with the laws of Mississippi; to increase or diminish
27 its capital from time to time to any amount by vote of its stock holders as hereinafter provided; to hold and own personal property to any amount, and to sell, exchange and encum-

ber the same; to borrow money and secure the payment of the same by a mortgage or deed of trust upon its property revenues and franchises; to issue its bonds or other evidences of debt and secure the payment of the same by a mortgage or deed of trust upon its property, revenues and franchises; to sell, exchange, pledge or hypothecate such bonds or other evidences of debt.

This corporation shall also have the power of acquiring by purchase or otherwise an assignment to it — any contract which the city of Vicksburg may have heretofore entered into with any other person or persons to provide a supply of water to the city of Vicksburg and its inhabitants, and of succeeding to and exercising and enjoying all, and singular, the rights, powers, privileges, advantages, benefits, immunities, revenues and profits arising out of, or accruing from, such contract, which said city, by ordinance or otherwise, may have conferred and granted to such person or persons; and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of its organization, and as may now or hereafter be conferred by the laws of the State of Mississippi.

Article V.

The capital stock of this corporation shall be two hundred and fifty thousand dollars, divided into five thousand shares of the par value of fifty dollars each, which shall be paid in such installments, and in such manner as the board of directors may determine: and the said capital stock or any part thereof, may be issued for money, or for property actually received by or labor or services actually rendered to this corporation on such terms as it may contract or deem necessary and proper for the transaction and conduct of the business and purposes for which it is incorporated; and when so issued, it is to be taken and deemed by all parties in interest as fully paid up at its par face value, and subject to no further calls or assessments whatever, and this corporation may issue and dispose of its bonds in like manner.

Each stock holder shall be entitled to a certificate under the seal of this corporation, and signed in its name by its president and counter-signed by its treasurer, specifying the number of shares to which he may be entitled, which shall be transferable as now provided by law.

28 Article VI.

The business and affairs of this corporation shall be conducted by a board of directors consisting of five persons, a majority of whom shall constitute a quorum. The first board shall be elected as hereinafter provided and thereafter said board shall be elected by the stock holders from among their own number at their annual meeting as hereafter provided. The said boars is hereby vested with full power and authority to do all things necessary and requisite to carry into effect the purposes for which this corporation is created.

Within twenty days after its election, the said board shall meet in the city of Vicksburg, or in the city of New York, and elect one of their own number president, and shall appoint or elect a treasurer and secretary who may be directors, and latter office may be held by one and the same person, and such other officers agents and employees as said board may deem expedient. The said officers and board of directors shall hold office for one year, and until their successors are elected and quali-ed, and enter upon the performance of their duties, which shall be such as are ordinarily exercised by such officers, and as may be from time to time prescribed by the by-laws or the board of directors.

The annual meeting of the stock holders shall be held at the city of Vicksburg, Mississippi, on the *day* second Wednesday in the month of May, in each and every year, commencing with the year 1888, between the hours of nine o'clock a. m. and four o'clock p. m. in pursuance of such notice as may be required by the by-laws, and at such meeting the stock-holders shall elect the board of directors for the ensuing year and transact such other business as may be lawfully brought before it. At all stock-holders' meetings a majority of the votes of the stock holders present or by proxy shall govern, as herein otherwise provided.

In case of a failure to hold the annual meeting on the day herein prescribed, the same may be held on such subsequent day as the by-laws or board of directors shall appoint, and the said annual meeting may be adjourned from time to time, and any business may be transacted at such subsequent meeting as might have been transacted on the day fixed herein for the annual meeting.

The by-laws shall prescribe the time of holding and the mode of calling regular and special meetings of the board of directors.

Article VII.

The corporators herein named shall meet in pursuance of
29 a written notice to that end, designating the time and place of meeting signed by any two of them and deliv-ed to the other at least one day previous to such meeting, and when duly assembled, shall proceed to organize this corporation by the election of the first board of directors, and for that purpose any three of said corporators shall constitute a quorum.

Article VIII.

The stock holders of this corporation shall not be individually liable for any debts, loss, or damage or liability, contracted or incurred by said corporation. But each stock holder shall be liable for the amount of balance that may be due for stock subscribed for by him, according to the statute in such case provided

Article IX.

This charter shall not be altered or amended except by the assent of a majority of the stock holders, of this corporation expressed at

any annual meeting or at any meeting called in pursuance of a notice stating the purposes of the meeting, signed by the owners of at least two third- of the capital stock, or by the president and secretary of this corporation on the written request of at least one third of the capital stock, and published at least once in each week for two successive weeks immediately preceding the date fixed for said meeting, in any newspaper of general circulation published in the city of Vicksburg, Mississippi, and the said assent certified to be the president and secretary of this corporation shall accompany the application for the proposed alteration or amendment.

In case any alteration or amendment is made to this charter a notice thereof directed to the stock holders of this corporation generally and clearly disclosing the nature of the alteration or amendment so made, shall be published once in each week for four successive weeks immediately following the date of the meeting at which the same was made, and such alteration or amendment shall be binding on all the stock holders unless those dissenting shall, within thirty days after knowledge that the same has been made, enjoin this corporation from acting under such alterations or amendments and if any stock holder or member shall fail to do so, he shall be estopped to deny the validity or binding effect thereof.

In testimony whereof, witness our signatures this the 1st day of February, A D. 1887.

J. B. MATTINGLY.
E. S. BUTTS.
30 L. W. MAGRUDER.
CLARENCE DELAFIELD.
CHESTER R. McFARLAND.

Approval of Attorney General.

There is nothing in the within charter of incorporation violative of the constitution od laws of this State.

T. M. MILLER,
Attorney General.

31 EXHIBIT "D."

Know all men by these presents, that, whereas the mayor and aldermen of the city of Vicksburg, State of Mississippi did on the 18th day of November, 1886, pass and enact a certain ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, giving the said city of Vicksburg an option to purchase the said works," which ordinance was thereafter on the 19th day of November 1886, duly approved as required by law.

And whereas under and by virtue of section 5 of the aforesaid ordinance the grantees thereof were empowered to procure the or-

ganization of a water works corporation with the right to assign to it all the rights and privileges acquired thereunder.

And whereas in pursuance of section 5 of the aforesaid ordinance the said grantees have procured the incorporation of the Vicksburg Water Supply Company under the laws of the State of Mississippi.

And whereas the terms and conditions of section 7 of the said ordinance as to acceptance of the said ordinance and filing of the penal bond as therein provided, *has* been duly complied with,

Now therefore know ye that for and in consideration of the sum of one dollar lawful money of the United States of America and other valuable considerations to us in hand paid by the Vicksburg Water Supply Company a corporation existing under and by virtue of the laws of Mississippi, the receipt of which is hereby duly acknowledged, we, said Samuel R. Bullock and William S. Mercer composing the firm of Samuel R. Bullock and Company, for ourselves, our personal representatives and assigns, have assigned,
32 transferred and set over, and do by these presents, assign, transfer and set over unto the said Vicksburg Water Supply Company and its successors and assigns, all our right title and interest in and to the ordinance aforesaid, and all ordinances, resolutions and orders adopted subsequent to the aforesaid ordinance, and in any manner relating thereto, as fully and to all intents and purposes as if the said The Vicksburg Water Supply Company had been originally named as grantee therein.

In witness whereof, we have hereunto set our hands and seals this first day of March, 1887.

SAM'L R. BULLOCK.
WM. S. MERCER.

Signed and delivered in the presence of
JAS. A. RYERSON.

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this 16th day of March, in the year one thousand eight hundred and eighty seven before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi to take acknowledgements of deeds, &c., to be used or recorded therein, personally appeared the within named, Samuel R. Bullock and William S. Mercer, who acknowledged that they signed, sealed and delivered the foregoing instrument on the day and year therein mentioned as their act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

(Signed) EDWIN F. COREY,
[SEAL.] Commissioner of the State of Mississippi.

Office 60 Wall St., N. Y.

EXHIBIT " E."

Know, all men, by these presents: That whereas the mayor & aldermen of the city of Vicksburg did on the 18th day of November, 1886 pass certain ordinance entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates successors, and assigns for a supply of water for the public use, and giving the said city of Vicksburg an option to purchase the said works

33 And whereas under and by virtue of section 5 of the said ordinance the grantess thereof were authorized to procure the organization of a water works corporation and to assign to it all the privileges acquired thereunder.

And whereas in pursuance of said authority the Vicksburg Water Supply Company has been incorporated under the laws of the State of Mississippi, and under and by virtue of a certain assignment bearing date March 1st. 1887, the said company has succeeded to all the rights and privileges acquired under the aforesaid ordinance by the said Samuel R. Bullock and Company.

And whereas it is provided by section 5 of the said ordinance that no assignment shall be valid unless the assignee shall accept the said ordinance in writing.

Now therefore be it known that the Vicksburg Water Supply Company for itself, its successors and assigns *have* accepted and by these presents accept- and agree- to become bound by the terms and obligations of the aforesaid ordinance.

In witness whereof the said company has caused this acceptance to be signed in its corporate name by its president and its corporate seal attached by its secretary to be hereto affixed this first day of March, 1887.

[SEAL.] (Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By E. WOLTHAM, President.

Attest: CHARLES M. BERRIAM, Secretary.

I hereby certify that the above and foregoing is a true and correct copy of the original acceptance of the Vicksburg Water Supply Company as the same appears of record now on file in my office.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

EXHIBIT "F."

At an adjourned regular meeting of the board of mayor & aldermen of the city of Vicksburg, held on the 18th day of May, 1887, the following action was had, to-wit:

34 "The written acceptance of the Vicksburg Water Supply Company accepting and binding themselves to the terms and obligations of the contract as accepted by Samuel R. Bullock & Company, was read and ordered recorded."

I hereby certify the above to be true and correct.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

EXHIBIT "G."

Whereas on the 8th day of August, 1900 at the Real Estate Exchange # 111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers Loan & Trust Company, trustee, recorded in Book — on page — of the records of deeds of Warren county, Mississippi, securing the payment of two hundred & fifty thousand dollars of bonds and interest thereon, there was sold under said deed of trust all of the property, real and personal belonging to the Vicksburg Water Supply Company located in Vicksburg, in Warren county, Mississippi, as well as elsewhere, and more particularly described as follows to-wit:

All of its real and personal property, goods and chattels now owned or which may be hereafter acquired by it, including its land water works, buildings, pump houses, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, rent, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the water company of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board of mayor

& aldermen of the city of Vicksburg, Mississippi, dated on the
35 18th day of November, 1886, and approved on the 19th day of November, 1886, for the rental of hydrants for the use of the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company, on the first day of March, 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor & aldermen on the first day of March, 1887, of Bullock & Company's assignment of said contract to *to* the Vicksburg Water Supply Company and of the Vicksburg Water Supply Company's acceptance of contract; whereupon the board of mayor & aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May, 1887.

Now therefore, at said sale as aforesaid, said Vicksburg Water Works Company of Vicksburg, Mississippi, purchased said property, contract, &c., as above described and set out.

Now therefore for the consideration of one dollar, cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claim- all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property as above described, real and personal, or that it may now own, or may have owned or may hereafter acquire, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by respective secretary, to be hereto affixed on the 18th day of October 1900. Revenue stamps having been affixed to deed from Farmers Loan and Trust Company to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,
[SEAL.] President of the Vicksbury Water Supply Company.

W. G. SNOW, Secretary.

STATE OF NEW YORK, }
New York City and County, } *ss*:

Personally appeared before me Charles Edgar Mills, a duly
36 authorized commissioner of deeds for the State of Mississippi, in New York, residing in New York, city and State, the within named Whitney Conant, president of the Vicksburg Water Supply Company and W. G. Snow, secretary, who each acknowl-

edged that they had signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the uses and purposes therein mentioned they being -hereto duly authorized. That the corporate seal attached is the corporate seal of said company and was duly affixed thereto by due authority.

Given under my hand and official seal this October 18th, 1900.

(Signed) CHARLES EDGAR MILLS,
[SEAL.] Commissioner for the State of Mississippi in New York and Notary Public for New York County and State.

STATE OF MISSISSIPPI, Warren County. } ss:

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th day of December, 1900 at 9.10 o'clock a. m. and duly recorded in Deed Book 93 page 463 *et seq.*

Witness my hand and seal of said court this 10th day of December, 1900.

(Signed) J. D. LAUGHLIN, Clerk,
[SEAL.] By J. L. HYLAND, D. C.

EXHIBIT "H."

To the honorable board of mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: On the 18th day of September, 1900, I, as secretary of the Vicksburg Water Works Company notified you that it was the assignee and owner of a certain written contract entered into between Samuel R. Bullock & Company of the one part, and the board of mayor and aldermen of the city of Vicksburg of another part, approved and accepted on the 19th day of November 1886 by both parties, whereby Bullock and Company their associates, successors and assigns for certain considerations therein mentioned *is* to supply the city with -ater for public and private use but I withdrew the notification until the board of directors of the Vicksburg Water Works Company could officially meet and accept said contract and authorize me to give you notice, and the same having been
37 done by the Vicksburg Water Works Company by resolutions by said board of directors, now therefore, this instrument in pursuance of their action and request in this behalf, is to inform you that the Vicksburg Water Works Company of Vicksburg, Mississippi is the owner of said contract and has been, since about the fifteenth day of August, 1900, and in accordance with its minutes by resolutions adopted by its board of directors it thereby accepted

said contract and said ordinance and became bound by its terms, conditions and obligations in every respect as the assignee and owner of said contract, and I as its secretary was instructed to give you said notice of its acceptance as above set out.

Witness its hand and seal of its secretary this 19th day of November, 1900, at Vicksburg, Mississippi.

(Signed) M. O. CRUMPLER.

I received a copy of said notice the 20th day of November, A. D. 1900.

(Signed) H. J. TROWBRIDGE,
City Clerk.

EXHIBIT "I."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th day of November, 1900, amongst other proce-dings had at said meeting, was the following to-wit:

Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and the seal of said city this 13th day of November, 1900.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk.

(Copy.)

EXHIBIT "J."

Resolved:—That the water works committee is instructed
38 to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water works system not to exceed in value $150,000 including all the expenses of engineering supervision etc., etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant, machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers,

the condition of the system as to repairs, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at an early day as possible for the action of this body.

EXHIBIT "K."

To the honorable board of mayor and aldermen of the city of Vicksburg:

When your petitioners purchased the water works of this city, it knew that it- dependent source of revenue and support must come from its contracts with the city and citizens to supply the same with water as a protection against fire, private use, etc., and that it has been supplying said city and citizens with water for these purposes and faithfully in accordance with said contracts and with the understanding that the city would pay the contract price to petitioner as agreed but notwithstanding this contract and faithful delivery, the city through you, is now refusing to carry out and pay the contract price to the petitioner as agreed upon for water received and used by you, but offers a wholly and inadequate price for said water so received and used.

Your petitioner shows aside from the legal obligations under this contract, the unjust proposition in offering to pay what you call a reasonable price for services rendered, in this, the city through its citizens are now only obligated to pay your petitioner under contract price $7,600.00 annually, while the city or its citizens are saving about $35,000.00 annually on insurance alone, caused or brought about solely by the water used by you, thereby leaving a net gain after paying $7,600.00 of over $25,000.00 annually to the city or her citizens which are one and the same, aside from the further
39 benefits received by you free of charge, such as public fountains, schools, hospitals etc.

Your petitioner further shows that we are anxious and willing to keep up this constant supply of water and maintain the pressure thereof, but, should you reduce the present price or refuse to pay at all, it will simply be impossible for your petitioner to keep up its enormous expenses and maintain itself, and supply water because you know and realize that it is impossible for any concern to continuously run its business at a loss. With the present price which you are now obligated under said contract to pay for said water, it is almost impossible for your petitioner to operate and live. The water company has and did offer to the water committee and the attornies for the city that the water company would give the city assurance in writing that the payment for water received and used by the city at the contract price, should not in any way prejudice the city's suit against the water company.

40 EXHIBIT "X."

This indenture made the first day of March in the year 1887 between the Vicksburg Water Supply Company, a corporation created by and organized under the laws of Mississippi at the city of Vicksburg, party of the first part and hereinafter designated "the water company" and the The Farmers Loan & Trust Company, a corporation created by and organized under the laws of the State of New York, party of the second part, hereinafter designated "the trustee." Witnesseth:

Whereas the water company was incorporated for the purpose of conducting, maintaining and operating a system of water to supply the city of Vicksburg, Mississippi, and its inhabitants with water, and whereas in order to effect its corporate purposes the water company has determined to issue 250,000 of its coupon bonds in form as follows, to secure the payment by mortgaging its property and franchises.

The Form of *Coupon*.

Number —. $1,000.00.

UNITED STATES OF AMERICA,
City of Vicksburg, State of Mississippi, County of Warren.

Vicksburg Water Supply Company (Vignette) First Mortgage Six per Cent. (6 %) Thirty (30) Year Gold Bond.

Know all men by these presents, that the Vicksburg Water Supply Company is indebted to and hereby promises to pay Samuel R. Bullock & Company or bearer one thousand ($1000) dollars of gold coin of the present weight and fineness lawful money of the United States of America at the office of the Farmers Loan & Trust Company in the city of New York on the first day of March in the year 1917, with interest thereon at the rate of six per cent. (6 %) per annum payable at the same place in like gold coin *and* on the first day of March and September in each and every year until the majority hereof — upon the presentation and surrender of the next coupon thereof as they respectively become due, free from all United States and municipal taxes levied or to be levied. This bond is one of the series of the two hundred and fifty (250) bonds of the like amount, tenure and date numbered from one (1) to two hundred and fifty (250) both inclusive. Amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), and is secured by an issue subject
41 to the provision of the first mortgage of deed of trust therein of even date herewith conveying to the said Farmers Loan & Trust Company in trust for the benefit of the holders of the said series of bonds and the property and franchises of the Vicksburg Water Supply Company now owned or hereafter to be acquired by it and

more particularly described therein. This bond shall not become valid until the certificate indorsed herein shall have been signed by the said trustee.

In witness whereof the Vicksburg Water Supply Company has caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereto affixed, the first day of March, A. D. 1887.

VICKSBURG WATER SUPPLY COMPANY,
By —— ——, President.

Attest: —— ——, Secretary.

$30.00. Form of Coupon. $30.00.

The Vicksburg Water Supply Company hereby promises to pay to the bearer at the office of the Farmers Loan & Trust Company in the city of New York on its surrender thereof, thirty dollars ($30.00) in United States gold coin on the — day of —— 18— being six months' interest due on that day on its first mortgage six per cent. (6 %) thirty year (30) gold bond.

—— ——, Treasurer.

Form of Trustee's Certificate.

Trustee's Certificate.

It is hereby certified that this bond is one of the series described and referred to in the mortgage or deed of trust within mentioned.

THE FARMERS LOAN & TRUST COMPANY, Trustee.
—— ——, Trustee,
By —— ——, Trustee.

Now this indenture witnesseth that the water company to better secure the payment of the principal and interest of said bonds ratably and without discrimination or preference according to the true intent and meaning thereof and also for and in consideration of the sum of one ($1.) dollar in money of the United States of America to it in hand paid by the trustee a receipt of which is hereby acknowledged, hath, granted, bargained, sold, alien-, remised, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the trustee and its successors forever all of its real and personal property, goods,
42 chattels owned now or which may hereafter be acquired by it including its land, rents, water works, buildings pumphouses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county

of Warren, State of Mississippi, together with all and singular the tenements, hereditamnets and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, profits accruing therefrom, also all and singular the corporate franchises, privileges, rights liabilities which the water company now has and can exercise or shall hereafter acquire and possess and also all the estate rig*th*, title, interest, property, possessions, claim and demand whatsoever as well in law as in equity of the water company, of and to the property above described or hereafter — be acquired, and each and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above granted and described premises with the appurtenances unto the trustee and its successors forever.

In trust nevertheless and to and for the uses and purpo*p*es hereinafter expressed of and concerning the same for the equal pro rata, benefit and security of all who may become the lawful owners and holders of any of the bonds and coupons intended to be secured hereby without any provisions of priority of any bond over another by the name of priority in the time of issue or negligence or otherwise. And in order to carry out the purposes of this trust it is covenanted and agreed;

1st. Until default shall be made in the payment of the interest of said bonds according to their tenure of the terms of this instrument or in the payment to be made in the "sinking fund" as hereafter provided and as long as the condition and agreements herein contained shall be faithfully preserved the water company shall retain possession of the above granted and described property, and use, enjoy and operate the same and the leases, issues, incomes and profits thereof to take, have and apply to and for its sole use and benefit but in such manner as will not impair the security hereby created.

2nd. Should any default be made in the payment of the principal or interest of the aforeaaid bonds according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then upon the
43 written request of the holders of at least one-fourth of the aforesaid bonds then owing and outstanding so to do and in proper indemnification being made against the costs and expenses to be incurred, the trustee or its successors shall have the right by its agent, attorney or servants to enter into, upon and take possession of all and singular the property hereby conveyed or intended so to be, and to every part and 7ortion thereof and have the use and operate the same and exercise the privileges pertaining thereto and make such repairs, replacements or improvements as it may in its discretion deem necessary for the proper preservation and operation of the said mortgaged property and take collect and receive the earnings, income, liens, issues and profits of the same, and after deducting the expenses incident thereto, including a reasonable compensation to the trustee and all taxes, rents or assessments due there-

upon to apply the money so arising from the said mortgage- property to the payment in full of the interest coupon- in default of said bonds in the order that they may fall due and after paying such interest as shall be unpaid and in arrear to render the over-plus if any there be and surrender the mortgage- premises unto the water company or its successors to be managed by it as if such default had never taken place, provided however that if the trustee shall take possession in case of default in the payment of the principal of the aforesaid bonds according to their terms of to the terms of the instrument or if such default be made while the trustee is already in possession after the payment of the interest and other expenses as above provided as the same may *be* from time to time become due and payable, the trustee shall apply the residue of said money to the payment and extinguishment of the principal *to* the aforesaid bonds ratably and without discrimination or provisions and shall continue in possession of and shall operate and manage the said mortgage- property until the said principal is fully paid and satisfied, and afte- paying said principal and interest and other expenses in full shall render the over-plus and surrender the mortgaged premises and property unto the water company or its successors, free of and released from the rent hereby created and provided further that in case of default of the payment of interest in the manner and period aforesaid, if the holders, or at least a majority, of the bonds then owing and outstanding shall notify the water company and the trustee or their respective successors in writing before the interest so in default has been paid that they, the said bond holders, elect that the
44 principal of all of the bonds secured hereby, and then owing and outstanding become and be due and payable, then upon such election being made and notice being given as aforesaid the principal of all of said bonds shall immediately become and be due and payable although the period therein limi-ed for the payment thereof shall not then have expired.

3rd. If default shall be made in the payment of the principal or interest of the aforesaid bonds, according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months, then it shall be lawful for the trustee or its successors on being indemnified as aforesaid and upon a written request of the holders of a majority of the said bonds then owing and out-standing. So to do after entry as aforesaid or other entry or without entry to use or dispose of all the property and franchises of every kind and description hereby conveyed and of benefit and equity of redemption of the water company and its successors and assigns and of persons claiming under them in and to the same on publication to the highest bidder after a notice thereof be published in one or more newspapers of general circulation printed in the city of Vicksburg, State of Mississippi and the city of New York, once each week for twelve successive weeks and on the day of sale and buy such from and other notices or requirements as may be necessary under the laws of the State of Mississippi. The sale to be held in the city of

Vicksburg or in the city of New York, with the power to the trustee to adjourn the same from time to time as its discretion by advertisement or announcement *at* the time and place of the proposed sale, and the attorney for the water company or its successor for that purpose by these presents authorize-, constitute- and appoint-, to make execute and deliver to the purchaser or purchasers thereof a good and sufficient deed in fee simple or at the discretion of the trustee aforesaid, to foreclose and sell the equity of redemption to the water company or to other persons having a legal or equitable right or claims *or* in or to the mortgaged premises, or any portion thereof by proceeding in law or equity or in any court, or tribunal of competent jurisdiction which sale so to be made in either of the modes herein described shall forever be a perpetual bar both in law and equity against the water company, its successors or assigns, and against all other persons claiming or to claim the said property or any part thereof, by from or under them or any of them, the water company hereby expressly waives the benefit and advantage of any and all valuation, stay*ed* appraisement, or exemption laws, and all laws requiring a mortgage or other securities for money to be foreclosed for action therefor now in force and which may hereafter be in force under the laws of Mississippi.

4th. In case of a sale of the property hereinbefore mentioned in either of the modes here-before described the trustee shall apply the proceeds hereof after deducting the cost and expenses of said sale to the payment in full ratably and without discrimination for preferance in case there is a deficiency of the principal of all of said bonds, then due and outstanding and the interest due thereon up to the time of such application rating the over plus if any there be unto the water company its successors or assigns.

5th. In the event of the sale under the terms of this mortgage it shall be lawful for any bond holder or bond holders or for the trustee on behalf of such of them as may unite in authorizing it so to do to purchase the property and franchises hereby conveyed and the bonds and coupons held by the purchaser, the bond holders -*ah*ll receive in payment of the purchase money so obtained at said sale by them or by the trustee on their, behalf, the said sum paid in cash, equivalent to the amount which the purchase bond holders shall be entitled to out of the proceeds of such sale after *after* deducting all legitimate cost and expenses provided however that the purchasing bond holders so request- the trustee to purchase the said mortgage property o*b* their behalf shall contribute in cash their portion *at* the expense of said sale or in case of a purchase by the trustee of this section the property and franchises shall be held by it in trust for the benefit of such bondholders only as may have authorized it to purchase on their behalf and free *for* the lien of these presents.

6th. If the water company shall well and truly pay or cause to be paid the principal and interest of the said bonds when the same shall become due and payable according to the t*n*ure of said bonds

and coupons thereto attached and shall comply with all other requirements hereof according to the true intent and meaning of these presents then and in that event all of the estate, right, title, and interest of the trustee and its successors, in the trust hereby
46 created shall cease, determine and be null and void, otherwise the same shall be and remain in full force and virtue.

7th. If at any time the trustee or its successors shall enter into and take possession of said property or the trustee to sell the same by reason of any default in the payment of any principal or interest or anything required to be done by the water company as herein provided the water company shall have the right at any time prior to the actual sale of said property to pay and satisfy in full the principal of said bond- and the interest thereon to the date of payment together with all just and proper cost, charges and expenses paid or incurred by the trustee and a reasonable compensation for its services and upon such payment and satisfaction the trustee shall surrender to the water company all of said property hereby granted and shall execute and deliver to the water company such instrument as the water company may deem necessary and discharge these presents and records and to revest in it the title to said property and franchises.

8th. The water company and its successors and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in and to the hereinbefore granted property put there under or in trust for them shall and will at any time and times hereafter upon reasonable request of the trustee or its successors buy — at the proper cost and charges in the law, of the water company its successors or assigns, made, do and execute, or cause or procure to be made, done or executed all and every such further and other lawful and reasonable, conveyance and assurance in the law for the better and more effectual vesting and confirming the property and franchises hereby granted or intended so to be and especially such property and franchises as shall be hereafter acquired in and to the trustee or its successors forever in trust as aforesaid as by the trustee of its successors, or their *concern*, learned in the law shall be reasonable devised, advised or required.

9th. Should the trustee herein named resign, — for any reason whatever become incapic-ated from acting under these terms it shall be lawful for the holders of the majority of the bonds then owing and outstanding, intended to be secured hereby to nominate by an instrument in writing executed under their hands and seals acknowledged in like manner, and the deed to be recorded in
47 the State of Mississippi, such persons or corporation to act in the premises instead of such out going trustee as they shall deem fit and upon a written acceptance of such persons or corporation so nominated and appointed to be made and executed in like manner and deliver- to the water company he or it shall become vested with the same estate, rights, powers and liabilities as if he or it had been expressly named as the trustee herein and thereupon

all of the estate, right, title and interest of the outgoing trustee shall be divested, ceased and determine and be null and void.

10th. In any case herein provided — which the trustee shall have the right to enter upon the said mortgaged premises or to do any other act to enforce any provision hereof the holder or holders or the majority of the out-standing bonds may by written instrument sign- from time to time, instruct and require the trustee to waive, discontinue and defer the exercise of such right, absolutely or upon such terms as such majority may deem proper or as such majority may reverse or annul, the power of the trustee already exercised but the exercise of the aforesaid power of the trustee or the majority of the bond holders in case of one default shall in no wise affect their respective rights in case of a subsequent default.

11th. The trustee accepts the trust hereby created and its duties upon the following terms which are expressly agreed to — the recitals herein contained and made on behalf of the water company and not of the truatee.

The trustee shall be responsible only for its willful negligence or default and not for the act or default of any agent, attorney, or employee selected with reasonable discretion.

The trustee shall resign upon a notice to the water company of sixty days or upon shorter notice as the water company may accept as sufficient. The trustee shall not be bound to take any action toward the inforcement of any provision of this mortgage not to appear in or defend any suit or proceeding brought against it as such trustee unless previously indemnified to its reasonable satisfaction against all cost, claim, suits or liabilities incident to or which may resuly from such action or default nor to recognize any person as the holder of any of said bonds nor to take any action at his request even if indemnified as above provided, unless his bonds are submitted to the trustee for inspection and his ownership to the said bonds satisfactorily proved if disputed.

The trustee shall not be bound to record or file this mort-
48 gage or take any steps to make it a lien upon personal property or to renew or perpetuate, nor to insure the mortgage-property.

The trustee shall have reasonable compensation for its services and be reimbursed for all of its proper expenses in executing the trust hereby created and such compersation and expenses shall be at first *charged* upon the trustee's estate and fees.

12th. The holder or holders of any of the said bonds or coupon-secured hereby shall not have the right to ins-itute suit or proceedings to inforce any provisions herein contained unless the trustee shall refuse or neglect to institute the same after a written request from any bond holder or bond holders and at a reasonable opportunity so to do and the tender or receipt of a reasonable indemnity against the cost and expenses of said suit, or proceeding, by such written request and tender or receipt of a reasonable indemnity

shall be a condition precedent to the commencement of any suit or proceeding by any bond holder.

In witness whereof the Vicksburg Water Supply Company and the Farmers Loan & Trust Company, have caused these presents to be signed in their respective corporate names by their respective presidents and their corporate seals attested by their respective secretaries, to be hereto affixed the day and year first above written.

VICKSBURG WATER SUPPLY COMPANY,
By E. WALTMAN, President.

Attest:
CHARLES M. BERREAN, Secretary.

[SEAL.]

FARMERS LOAN & TRUST COMPANY,
By R. G. ROLSTON, President.

Attest:
WILLIAM H. LEUPP, Secretary.

[SEAL.]

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this the third day of March, in the year 1887, before me the undersigned, Edwid F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and *in* the laws of the State of Mississippi, to take acknowledgements of deeds etc., to be used and recorded therein, personally appeared E. Waltman, president, and Charles M. Berrean, secretary of the within named Vicksburg Water Supply Company who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of said company and
49 delivered the same as the act and deed of said company on the day and year therein mentioned. And E. Waltman of the said company being by me duly sworn did depose and say that he resides in the city of New York, *with* the seal affixed to the seal of the foregoing instrument as the corporate seal of the Vicksburg Water Supply Company and was thereto affixed by the authority of said company and that he as president together with Charles M. Berrean, as secretary subscribed their names thereto by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

E. F. COREY,
Commissioner for the State of Mississippi.

Office 60 Wall St., N. Y.

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this the fifth day of March in the year 1887, before me the undersigned Edwin F. Corey, a commissio-er duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowle-gments of deeds etc., to be used and *are* recorded therein, personally appeared Roswell G. Robertson, president and William H. Leupp, secretary, of the within named Farmers Loan & Trust Company, who severally acknowledged that they signed the wit-in named and foregoing instrument as such president and secretary sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned, and the said Roswell G. Robertson of the said Farmers Loan and Trust Company being by me duly sworn did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said Farmers Loan & Trust Company and was thereto affixed by the authority of said company and that he as president with William H. Leupp, as secretary, subscribed their names thereto by like authority.

In witness thereof I have hereto set my hand and affixed my official seal, the day and year last aforesaid written.

EDWIN F. COREY,
[SEAL.] Commissioner for the State of Mississippi.

Office 60 Wall St. N. Y.

STATE OF MISSISSIPPI, }
Cointy of Warren. }

I George T. Hardy, clerk of the chancery court of said county hereby certifies that the foregoing instrument was filed in my
50 office on the 10th day of March, 1887, at 12.45 o'clock p. m. and duly recorded in Deed Book Number 63 pages 48 to 57, inclusive.

Witness my hand and seal of court this 11th day of March, 1887.

[SEAL.] GEORGE T. HARDY, Clerk.

EXHIBIT " Y."

STATE OF MISSISSIPPI, }
County of Warren. }

In the Chancery Court.

To the Honorable W. C. Martin, chancellor:

The Mayor & Aldermen of the City of Vicksburg a municipal corporation under the laws of the State complainants exhibit this their

bill of complaint against The Vicksburg Water Supply Company and The Vicksburg Water Works Company, corporations under the laws of the State of Mississippi and domiciled in the said city of Vicksburg defendants and respectfully shows:—

That on the 18th day of November, 1886 the said complainants in their said official capacity adopted an ordinance whereby a contract was entered into with certain persons doing business under the firm name and style and designated as Samuel R. Bullock & Company their associates, successors and assigns for a supply of water for public use:

That a copy of said ordinance is hereto annexed as Exhibit "A" and made a part of this bill.

It is provided in section (1) that in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for a period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist — may hereafter be extended and within such other territory as may now or hereafter be
51 under its jurisdiction for the purpose of laying pipes, mains, and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to the city of Vicksburg, Miss., and its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force: and further said section makes provision that the said Samuel R. Bullock & Company should exercise proper care and diligence in and about the construction of said works.

That by section 2 the general plan of said system of water works is defined including specifications as to mains, hydrants, gates and valves, pumps, boilers, stand-pipe, pump-house and also as to the source of the supply of water.

It is specially provided under the head of pumps that the pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours, against the pressure needed to supply all parts of the pipe system with an abundant supply of water.

They shall be so arranged as to be operated separately or together.

By said section *of* the source of supply and character of water was specially designated in words as follows:—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water, for all purposes of domestic and manufacturing consumption.

By section three provisio*m* was made for compensation to the said Samuel R. Bullock & Company as follows:—In consideration of the

public benefit and the protection to property resulting from the construction of said system of water works, the mayor & aldermen of the city of Vicksburg hereby rents of the said Samuel R. Bullock & Co-pany, their associates successors and assigns, not less than eighty (80) double nozzle, frost proof, fire hydrants for the aforesaid period of thirty (30) years, at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth day of January and July. After the first year of the operation of said water works, the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred hydrants shall be located on the original twelve (12) miles of mains, at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of said period of thirty years unexpired at the time of placing each
52 of said hydrants.

The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty dollars (50) for each hydrant, payable as aforesaid during the unexpired period of the original term of thirty (30) years * * *

By section — it is provided that the said Samuel R. Bullock & Company should supply and provide with water free of charge six drinking fountains with openings for man and beast at such places as the board of mayor and aldermen of said city might designate.

By section — it is provided as follows:—The said Samuel R. Bullock & Company, their associates, successors and assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder, provided, that such assignment shall nor invalidate or affect the bond required by section seven (7) hereof, and no assignment hereof shall be valid, unless such assignee shall, in writing to the said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

By section eleven it is provided that a pressure of not less than twenty pounds on distributing mains shall be maintained at the highest point of elevation; and it is further provided if the pressure should be less than twenty pounds in two calendar months in succession then all of the rights and privileges of the said Samuel R. Bollock their associates, successors and assigns acquired by virtue of this ordinance shall at the option of the board of mayor & aldermen made in writing cease and determine * * *

It is provided in section twelve for a part of a consideration of

the contract that the property and business of said water works shall be exempt from municipal taxation for the first five years of their operation and thereafter during the period of said contract all of said property and the business shall be assessed for taxation for said city at a valuation not to exceed fifty thousand dollars.

53 That by section fourteen of said act it is provided that for the purpose of paying the obligations of the said mayor & aldermen accruing to the said Samuel R. Bullock and Company, their associates, successors and assigns under said contract the said mayor and aldermen shall annually levy and cause to be collected upon all the taxable property of said city a special tax to be known as the water works tax sufficient to pay said obligations during the continuance of the contract and until all of said obligations shall be paid and discharged.

Complainants further show that in pursuance of said contract the said Samuel R. Bullock and Company proceeded to construct and erect a system of water works in said city and that afterwards to-wit; on the — day of —— the said works were accepted by the said mayor and aldermen:

That thereafter the said Samuel R. Bullock & Company procured the organization of The Vicksburg Water Supply Company one of the said defendants, as a corporation under the laws of the State of Mississippi and by virtue of said section five assigned to said corporation said contract and afterwards on the — day of —— the said Vicksburg Water Supply — in writing accepted said ordinance and thereupon the said board of mayor and aldermen formally approved said assignment.

That the said Vicksburg Water Supply Company operated and owned said works from said date to the 15th day of August, 1900, and was actually paid the compensation fixed by said contract for the use of its hydrants aggregating the sum of about eight thousand dollars ($8000) per annum.

That on the first day of March 1897 the said Vicksburg Water Supply Company for the purpose of securing two hundred and fifty thousand dollars (250,000) of bonds executed a deed of trust upon all its property situated in the county of Warren and State of Mississippi, and described in said deed of trust as follows:—all its real and personal property goods and chattels now owned or which may hereafter be acquired by it including its land, water works, buildings, pump house, stand pipe, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements (hereditaments) thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents issues income and profits accruing therefrom also all and singular the corporate franchises, privileges, rights and liberties which

54 the water company now hath and can exercise or shall hereafter exercise or shall hereafter acquire and possess and also

all the estate right title, interest property possession claim demand whatsoever as well in law as in equity of the water company of, in and to the property above described and each and every part and parcel thereof with the appurtenances.

That sometime in March, 1900 the said First national bank sold all of said mortgage bonds to certain persons to-wit: M. O. Crumpler and others in consideration of twenty-five thousand ($25,000) cash and the further sum of one hundred and twenty-five thousand dollars (125,000) in certain mortgage bonds to be thereafter issued upon the said property.

That it was also agreed between said parties that the deed of trust above mentioned should be foreclosed in accordance with its terms default having been made by said company as to its obligations under said deed of trust.

That a sale of said property was afterwards made on the 15th day of August 1900 in the city of New York by the trustees under said deed of trust at which the property above described was sold to the said M. O. Crumpler and others which said property was afterwards by said Crumpler and others conveyed to the defendant the said Vicksburg Water Works Company.

Complainants further show that the contract entered into with Samuel R. Bullock & Company on the 18th day of November 1886, is null and void and the attempt by said mayor & aldermen to make such contract was a gross abuse of their rights and powers.

That the said mayor and aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official terms to bind constituted authorities of said city to pay rents for the said hydrants as therein stipulated:

That whatever may have been at the time a reasonable and just compensation to be paid to said water company for said hydrants such payment is now an *exclusive* (excessive) and unjust charge and an extortionate burden upon the tax-payers of said city.

Complainants show that the cost to construct a system of works like that at present operated at Vicksburg and owned by said defendant's water works company can be built, in every respect as good, for a sum not exceeding one hundred and thirty thousand dollars ($130,000). The present income of said water works including their claim against the city for annual rentals of said hydrants amount- in the aggregate to thirty thousand dollars ($30,000) per annum and that the expenses of every kind including improvements and betterments would not exceed an annual outlay of fifteen thousand dollars ($15,000) which would be a net return of ten per cent. upon an investment of one hundred and fifty thousand dollars ($150,000) and that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal and said board exceede its power and authority in making a contract stipulating for the period aforesaid said rates.

Complainants further show that — the 25th section of the charter of

the city of Vicksburg whoch was in force at the time of making said contract it is provided that the said mayor and aldermen shall not make any contract involving an expenditure of corporation funds, relating to work on public streets, or the erection, extension or repair of public buildings, where the cost of the proposed work shall exceed five hundred dollars, or for material to be furnished exceeding two hundred dollars in value, except upon advertisement duly made for sealed proposals to do such work.

Nevecthel-ss said mayor and aldermen entered into said contract wh-reby said terms were imposed upon said city for the period without any advertisement for sealed proposals as provided by law by reason wher-of said contract was unauthorized and is illegal and void.

Complainants further show that the said mayor and aldermen had no right to make provisions as was attempted to be done by the 14th section of said contract to make an annual levy of a special tax to be known as the water works tax to pay the obligation of said city accruing under said contract.

Complainants further show that by the terms of the first section the said mayor and aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Company the exclusive right and privilege for the period of thirty years of erecting maintaining and operating a system of water works within the corporate limits of the city of Vicksburg and for the exclusive use of the streets, alleys, public squares of said city for that purpose, for the purpose of supplying water to the city of Vicksburg and its inhabitants for public and private use.

That the said mayor and aldermen had no right or power
56 to make such contract; that an exclusive grant or monopoly of the kind is in contravention of the public policy of the State and is illegal and void.

That it is provided by section two of said contract that the pumping plant should consist of two pumping engines each capable of pumping two millions [(2,000,000) of gallons of water per day of twenty-four hours.

Complainants aver and charge the fact to be that neither the Vicksburg Water Supply Company nor the Vicksburg Water Works Company have ever complied with the provisions of this section.

That in constructing said works originally the pumps were connected with the Mississippi river for a water supply but that the contrivance for that connection afterwards failed and the pumping of the water since 1889 from the supply has been made by pumps of inferior and unequal capacity to do the work required by said contract.

That said inferior pumps are used to take the water from the Mississippi river and to fill up a basin from which it is again pumped into the mains, by reason whereof said mayor and aldermen are entitled to have said contract annulled.

Complainants further show that the Vicksburg Water Supply Com-

pany and the Vicksburg Water Works Company have failed to provide for public and private use good and wholesome water.

That particularly since the 15th day of August, 1900 said Vicksburg Water Works Company have continuously from day to day and are now furnishing water which is not good or wholesome: that the water which has been provided from day to day by said company is wholly unfit for use and deleterious to health and that it is not even fit for ordinary bathing purposes.

That notwithstanding public and other complaints to the contrary said company has persistently, negligently, wilfully and unlawfully disregarde- its obligations to said city in this regard, by reason whereof the said mayor and aldermen now claim the right to have said conyract annulled.

That the purpose for which said works were constructed and organized was to provide not only the said city with fire protection but also its citizens with a supply of good and wholesome water for domestic use:

That such object and purpose has wholly failed by reason
57 of the negligence and disregard of its duties by said water works company in that regard.

Complainants further show and charge that the action of the said mayor and aldermen which undertook according to the provisions of section 12 of said contract to exempt the property and business of said water works from municipal taxation for five years and afterwards provide that the assessment of the said property should not exceed the sum of fifty thousand dollars ($50,000) was an abuse of the powers of said mayor and aldermen, whereby an unjust burden was imposed upon the tax payers of said city.

That said board had no right to make any exemption from taxation of said property and had no right to provide by contract for said assessment at fifty thousand dollars ($50,000) and the action of said board in this regard is illegal and void and said contract is in consequence a nullity.

Complainants further charge that the Vicksburg Water Works Company have negligently failed and refused to comply with the obligations imposed upon it by section eleven of said contract, wherein there is required a pressure of not less than twenty pounds shall be maintained upon the distributing mains at the point of their highest elevations.

That by said section it is further provided that if the pressure shall be less than twenty pounds for two calendar months in succession then all the rights conferred by said contract shall at the option of said mayor and aldermen made in writing cease and determine.

Complainants charge that the said Vicksburg Waters Works Company have negligently failed for more than two calendar months to maintain said pressure at said elevation and the board of mayor and aldermen do now exercise their option and do now declare that the

rights and privileges conferred by said contract shall cease and determine.

Complainants further show that the said board of mayor and aldermen at a meeting held on the 5th day of Nov. *it was* resolved and declared that the said board no longer recognized any liability under said contract to said company, by reason whereof said complainant- say that said contract no longer exists.

Complainants further show that by the terms of section seven a bond was required to be executed by the said Samuel R. Bullock and Company for the faithful performance of the conditions of said contract and by section five the right was given to the said
58 Samuel R. Bullock & Company to procure the organization of a water works company, authorizing assignment to it of all rights acquired under said contract: It was further provided that no assignment of the contract should be valid unless in writing, the assignee should accept the ordinance:

That by the terms of these sections it was contemplated that there should be no assignment of said contract except to a company organized by Samuel R. Bullock and Company and made in pursuance of said provisions:

Complainants now show that the said Vicksburg Water Works Company have never acquired by assignment or otherwise said contract or any rights thereunder:

Complainants show that the matters hereinbefore set forth in respect of the sale to M. O. Crumpler and others of the mortgage bonds issued by the Vicksburg Water Supply Company and a foreclosure under the deed of trust securing the same are now made upon information and belief.

The mayor of this city on or about the — day of October 1900 addressed a formal communication to the Vicksburg Water Works Company requesting that it should *it should* inform the constituted authorities of said city of the muniments of its title and the right by which it claims to be the assignee of said contract. A copy of said letter is hereto annexed marked Exhibit "B" and made a part of this bill.

The said water works company have refused and still refuse to give to the said mayor and aldermen of said city any information in the premises.

That they have not been informed and do not now know anything concerning the alleged rights of the said Vicksburg Water Works Company in the premises further than its own declaration that it claims to own the water works plant situated in this city and claims the right to assert the rights and privileges granted to Samuel R. Bullock & Company under said contract:

Complainants now deny that the said Vicksburg Water Works Company of the said M. O. Crumpler or any one else have ever acquired any right whatever accruing under said contract:

Complainants further show that the Vicksburg Water Supply Company is a defunct organization and is entirely without assets or

business and has ceased to be a going concern: they are informed that all of its property and other assets were on the 15th day
59 of August 1900 sold — said deed of trust:

That since the 15th day of August, 1900, it has not complied with any of the terms of said contract:

That it had no means or agencies whereby to carry out the obligations assumed by it under said contract:

That by the terms and spirit of said conyract its obligation was a continuous one from day to day to provide said city and its inhabitants with water in a sufficient supply for their needs:

That as between said Vicksburg Wqter Supply Company and the city of Vicksburg said contract has become and is void and a nullity:

That when it permitted itself to become permanently disabled from performing the obligations of said conyract and when it became utterly insolvent and bankrupt without any means or assets or without any organization as a corporation, said contract thereupon and thereby became dissolved and became a nullity:

That one, Chester R. McFarland who was formerly superintendent of the Vicksburg Water Supply Company has been nominally continued in said office to the 1st day of January 1901.

Wherefore complainants say that they are entitled as against the Vicksburg Water Supply Company to have said contract declared as having been dissolved and as being without force and effect.

Complainants further show that said mayor and aldermen were authorized and empowered by virtue of an act of the legislature approved in the — day of February 1900 to construct or cause to be constructed a system of sewerage in the city of Vicksburg at a cost not to exceed the sum of one hundred and fifty thousand dollars ($150,000).

That the health and the welfare of the inhabitants of said city demand that sa system of sewearge should be constructed; that the growth and extent of its population are such as imperatively require as a condition precedent to the construction of said sewerage that said mayor and aldermen should first acquire and own a system of water works either by purchase or construction: It was manifestly contemplated by said law and by the constituted authorities of said city that said water works then owned by the said water works company might be acquired upon reasonable terms of compensation, nevertheless under the alleged contract the said water works company claims the right to demand from the city the sum of eight thousand dollars a year during the unexpired term of said contract, to-wit until the 19th day of November, 1816:

60 That since the passage of said act the said Vicksburg Water Works Company have acquired possession of said plant and are now asserting that they have succeeded to the rights of the contract made with Samuel R. Bullock & Company as aforesaid.

That under the circumstances no reasonable terms can be made

between the said Vicksburg Water Works Company and said city for the purchase of said works:

That if said works were new they would not cost above the sum of one hundred and thirty thousand dollars ($130,000):

That the present plant is now about fourteen years old and has depreciated in value and efficiency accordingly:

That the present method by which water is taken from the Mississippi river and the present character of the water are such that they could not be tolerated, by the said mayor and aldermen, in case it should acquire a system of its own:

That any system which would be acquired by said city and operated for the benefit of its people would be a gross imposition upon its inhabitants and a gross dereliction of the official duties of said board if it did not provide for a supply of good and wholesome water:

That it would cost the sum of not less than fifty thousand dollars to change and improve the present water works plant in such a way as to make said plant efficient and satisfactory:

That the said Vicksburg Water Works Company will not yield its contention that it possesses a subsisting contract with said city whereby it is entitled to claim an annual payment of eight thousand dollars ($8,000) for the next sixteen years.

That in fact this pretended claims constitutes the most valuable of the alleged assets of said company: That without said plant *and* all of its property and business would not be worth the sum of one hundred thousand dollars ($100,000):

Complainants further show that the imperative duty imposed upon said mayor and aldermen by said law to make provisions for said sewerage plant, and to that end to acquire a system of water works is embar-assed and obstructed by the pretended claim of said Vicksburg Water Works Company as aforesaid.

That the said mayor and aldermen would not be warranted in exercising its rights to build a new system if it be true that they are bound to said water works company by contract requir-
61 ing a payment for the rental of the present works at eight thousand dollars per year for the next sixteen years:

That it would be a dereliction of public duty on the part of the mayor and aldermen and a gross disregard of their obligations to admit the contention of the said water works company that they are bound to it by the terms of said contract as a basis for the purchase of said plant.

That the said defendant, the said Vicksburg Water Works Company have unjustly and illegally embar-assed and obstructed the said mayor and aldermen in and about their duties as aforesaid and continue to persist and so obstruct them by said pretended and alleged claim.

Complainants aver that it is the duty of said mayor and aldermen to cause to be promptly determined the question of their liabil-

ity under said contract to the said Vicksburg Water Works Company:

That they owe it to the citizens and tax payers of said city to secure for them such public utilities as a water works plant and a sewerage system upon the most economical and best terms.

That they should be free to act for the best interest of said city in the premises and rid of their alleged liability to said company.

That they are entitled to have ascertained and determined whether or not the said city is legally bound by said contract: that if it shall be determined that they are so bound, they should be free to exercise their discretion, and await the convening of the next legislature for authority to build said sewerage system, without the condition precedent that they should own the water works plant:

That the public interest and the public welfare require that there should be speedily determined the question of their said liability, if any, under said contract.

62 They are advised and charge the fact to be by reason of the facts hereinbefore averred that they are entitled as against the Vicksburg Water Supply Co., to have said contract cancelled and annulled and as against said Vicksburg Water Works Company to have a decree that said company have never acquired any rights in or to said contract or if mistaken in this by reason of the matters and things stated they are entitled to have the same annulled and cancelled. To the end that the said complainants may have the said relief as may appear just and proper: They pray that the said Vicksburg Water Supply Company, Chester R. McFarland, superintendent of the same, the Vicksburg Water Works Company and M. O. Crumpler, superintendent of same, be made parties defendant hereto and that they be subpœnaed to appear and make answer to this complaint and to abide and perform the decrees of this court:

That said Vicksburg Water Works Company and M. O. Crumpler in, said answer be required true answers to make to the following interrogatories:

Int. 1. When and how did you or either of you become the owners of the water works plant formerly owned by the Vicksburg Water Supply Company?

Int. 2. Please append to your answers copies of all contracts and deeds whereon you base your claim and title to said works and your claim to the right and privileges conferred on Samuel R. Bullock & Company their assigns and successors under an ordinance of said city approved November 19th, 1886.

Com-lainants will ever pray etc.,

(Signed) VOLLER & MOUNGER,
Sol's for Compl'ts.
MAGRUDER & BRYSON,
Sol's for Compl'ts.

STATE OF MISSISSIPPI, }
County of Warren. }

Personally appeared before the undersigned a justice of the peace in and for said county the within named W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn says that the matters and things in the foregoing bill contained are true to the best of his knowledge and belief.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

This the 7th day of December, 1900.

JOHN W. POWELL,
[SEAL.] Justice of the Peace.

62½ The foregoing has the following indorsement, to-wit: No. 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg.—Bill of complaint.—Filed Feb'y 16th, 1901, L. B. Moseley, clerk, C. D. Banks, D. C. No. 1. S. S. Hudson, attorney at law, Vicksburg, Miss.

63 UNITED STATES OF AMERICA, }
Southern District of Mississippi, } *sc:*

The President of the United States to the marshal of the southern district of Mississippi, Greeting:

You are hereby commanded, without delay, to summon the Mayor & Aldermen of the City of Vicksburg citizen of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Vicksburg, at rules, to be holden in the clerk's office of said court, on the first Monday in July next, to answer a bill in equity exhibited against them by the Vicksburg Water Works Company citizens of the State of Mississippi and unless they shall enter their appearance therein; in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 16th day of Feb'y A. D., 1901.

L. B. MOSELEY, Clerk.
C. D. BANKS, D. C.

The defendant-, The Mayor & Aldermen of the City of Vicksburg *is* hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of July 1901, otherwise the bill may be taken *pro confesso.*

L. B. MOSELEY, Clerk.
C. D. BANKS, D. C.

64 Marshal's Return.

The foregoing has the following return made by the U. S. marshal, as follows, to wit:

Rec'd at Biloxi, Mii., Feb'y 19, 1901, and executed in the city of Vicksburg, Miis., by handing to —— Trowbridge, mayor of the city of Vicksburg, Miss., a true copy of this summons at the hour of 4.40 p. m. this Feb'y 21st, 1901.

Marshal's fees $4.64.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, Deputy.

The foregoing and above summons has the *foregoing* endorsement thereon as follows, to-wit: No. 41. Equity. Circuit court of United States, southern district of Mississippi, July 1st rules, 1901.—The Vicksburg Water Works Company, complainants, *vs.* The Mayor & Aldermen of the City of Vicksburg—Ret'd executed and filed April 20th, 1901. L. B. Moseley, clerk. —— ——, sols. for —.

65 Bond for Restraining Order.

United States Government for the Western Division of the Southern District of Mississippi.

Know all men by these presents that we, The Vicksburg Water Works Company principal, and M. O. Crumpler and S. S. Hudson, sureties, are held and firmly bound unto the Mayor and Aldermen of the City of Vicksburg, Mississippi, in the sum of $8000.00 to be paid to the said mayor and aldermen, their heirs, executors, administrators, assigns or successors for the payment of which weel and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this the 16th day of February, 1901.

The condition of the above obligation is such that whereas the Vicksburg Water Works Company of Vicksburg, Mississippi, did on the 14th day of Feb'y, 1901, obtain from the Honorable H. C. Niles, an injunction restraining the Mayor and Aldermen of the City of Vicksburg, its officers, servants, employés or agnets attorneys, counsel and solicitors, wh-reby they were absolutely *refrained* from assuming to abrogate and take away the franchise and contract rights of complainant and from further endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to the defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint and from perpetuating any

minutes or ordinances or resolutions of its own, whereby it denies liability or seeks to annul or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved and from any other proceedings against said complainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof.

Now if the said Vicksburg Water Works Company in case said injunction shall be dissolved within thirty days thereafter well and truly pay and satisfy all such costs and damages as shall wrongfully result from suing out its injunction and shall abide by and
66 perform the decree of said court, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

VICKSBURG WATER WORKS COMPANY,
By M. O. CRUMPLER, Sec. & Treas.
M. O. CRUMPLER.
S. S. HUDSON.

Signed, sealed and delivered in the presence of
L. B. MOSELEY, Clerk,
C. D. BANKS, D. C.,
Witnesses.

The above and foregoing has the following indorsement thereon, to-wit: Vicksburg Water Works Co., *vs.* Mayor & Aldermen of the City of Vicksburg.—Bond—Filed Feb'y 16th, 1901, L. B. Moseley, clerk. By C. D. Banks, D. C. S. S. Hudson, att'y for complainant.

67 Writ of Injunction.

UNITED STATES:

Circuit Court of the United States *of* the Southern District of Mississippi for the Western Division Thereof.

To the Mayor & Aldermen of Vicksburg, Mississippi, its officers, servants, employees, or agents, attorneys, counsel, solicitors, Greeting:

Whereas a bill of complaint has been lately exhibited in the circuit court for the southern district of the western division of Mississippi, by the Vicksburg Water Works Company to be relieved touching the matters in such bill contained, and praying for an injunction restraining you as hereinafter set forth, and obtained a fiat of the Honorable H. C. Niles, judge, granting an injunction, and bond and security having been given as required by said fiat and statute, we therefore strictly enjoin and command you under panalty of con-

tempt of court that you absolutely refrain from assuming to abrogate and take away the franchise and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business, and to coerce said complainant to sell its water works to the defendant for the said inadequate price, and from otherwise carrying on the unlawful conspiracy set out in said bill of complaint; and from perpetuating any minutes, or resolutions or ordinance of its own, whereby it denies liability or seeks to annul or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved, and from any other proceedings against said complainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof.

68

In testimony whereof, I the undersigned clerk of the circuit court of the United States for the southern district of the western division thereof, have hereunto set my hand and affixed the seal of said court at Vicksburg, Mississippi, this the 16th day of February A. D. 1900.

L. B. MOSELEY, Clerk.

[SEAL.] C. D. BANKS, D. C.

To the United States marshal for the southern district of the western division of Mississippi, to serve and return.

Marshal's Return.

The following return is endorsed on the above and foregoing writ of injunction:

Received at Biloxi, Miss., Feb'y 19, 1901, and executed at Vicksburg, Miss., by reading this process to —— Trowbridge, mayor of the city of Vicksburg, Miss., and handing to him a true copy thereof, at the hour of 4.40 p. m. this Feb'y 21st, 1901.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, Deputy.

Marshal's fees $4.64.

The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Co., *vs.* Mayor & Aldermen of the City of Vicksburg.—Writ of injunction—Filed Feb'y 16th, 1901, at 3 o'clock p. m.—L. B. Moseley, clerk. C. D. Banks, D. C.—Returned executed and filed April 20th, 1901. L. B. Moseley, clerk.

69 Amended & Supplemental Bill.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the United States circuit court in and for the western division of the southern district of Mississippi, thereof sitting at Vicksburg:

Your orator by way of amendment and supplemental to its original bill heretofore filed against the defendant would respectfully state that since the filing of the said original bill, to-wit on the 16th day of Feb'y 1901:

1st. Your orator would respectfully state that since the passage and approval of the act of the legislature entitled "An act authorizing the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy five thousand ($375,000) dollars, to purchase or construct, equip and maintain a water works system, construct and establish sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes." Said act is to be found on page 180 *et seq.* of the sheet acts of the said State and in accordance with its terms and provisions a pretended election was held on the 3rd day of July, 1900, under the authority of — a pretended resolution passed by the defendant on the question of bonding the city for said amounts and purposes was pretended to be submitted to the registered and qualified of — said city under its act, which propositions were carried by a small majority of the voters, which question was in words and figures as follows to-wit:—"Be it resolved by virtue of the authority vested in the mayor and aldermen of the city of Vicksburg, by the act of the legislature of Mississippi, entitled An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy-five thousand ($375,000) dollars to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July on
70 which day the question shall be submitted to the registered and qualified voters of said city whether the bonds of said city to the amount of three hundred and fifty thousand ($350,000) dollars, to purchase or construct, equip and maintain a water works system, constructand establish a sewerage system to purchase grounds for, erect and equip a city shall; shall be sold and issued for the above named purposes.

Be it further resolved That twenty (20) days' notice shall be given in the manner provided for in said act, of the date, the amount of

the bonds to be issued and the purposes for which the same are issued. The ayes and nays being called on the motion that the said resolution be adopted, prevailed affirmatively with the following votes—Ayes—Homberger, Caughlin, Montgomery and Walsh. Nays—Fousse, Campbell and Hayes." Said proposition will be found contained in Minute Book "H." page 444 of the record of the minutes of the defendant.

2nd. Your orator respectfully shows that the *rp*oposition submitted to the qualified electors to be voted on to bond the city contains more than one object, in fact several distinct and entirely independent propositions, which were pretended to be submitted, as a whole to the qualified voters of said city, when they should have been submitted separately unaided by any other proposition and should have been so acted upon by the board of mayor and aldermen in their authority to authorize the submission of the same to the voters, and said acts of the mayor and aldermen should have been an ordinance and is therefore void and of no effect.

For these reasons including those already mentioned in the original bill in this cause the said bonds authorized to be issued and sold and said act and resolutions of said board of mayor and aldermen and said election are illegal, void, unauthorized and unconstitutional.

3rd. Your orator would further show as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi in 1886 to provide for the erection and maintenance of a water works system to supply the said city with water or to contract with party or parties who should build and operate water works and the city having elected to enter into a contract with S. R. Bullock & Company and assigns on the — day of November 1886 to provide the defendant, the city, and inhabitants thereof with water for public and
71 domestic purposes for thirty (30) years, at a stipulated price as agreed upon in said ordinance. Therefore said city by its contract and ordinance with S. R. Bullock & Company ans assigns are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own, as provided by said legislative act and said resolution and said election of 1900; in competition with your orator against its own contract.

The premises considered, your orator prays that this honorable court will enjoin the defendant from issuing and selling said bonds for the purpose of building and constructing water works of its own in competition with your orator and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional, and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city, until the expiration of your orator's contract. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and

have the benefit of all general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

(Signed) M. O. CRUMPLER.

Personally appeared before me L. B. Moseley, of the United States court in and for the western division of the southern district of the State of Mississippi, one, M. O. Crumpler, superintendent and general manager of the Vicksburg Water Works Company and who *is a* authorized agent of said company makes oath that the foregoing matters and facts stated in the said foregoing amended bill of complaint of *its* own knowledge are true and correct and those stated on *the*, information and belief *it* believes to be true and correct.

Witness my hand and seal of office this 23rd day of April, A. D. 1901.

L. B. MOSELEY, Clerk.
C. D. BANKS, D. C.

[SEAL.]

S. S. HUDSON AND
A. A. EDWARDS,
Att'ys for Complainant.

The above and foregoing has the following endorsement thereon, to-wit: 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen. Amendment & supplemental bill.—Filed April 23rd, 1901, L. B. Moseley, clerk, C. D. Banks, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Demurrer of Defendant to Complainant's Bill.

72 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The defendant by protestation not confessing or acknowledging all or any of the matters and things, in said plaintiff's bill of complaint contained, to be true in such manner and form as the same are set forth and *laaeged*, doth demur to said bill, and for cause of demurrer showeth:—That complainant has not stated such a case as entitled *him* to any relief in this honorable court:

Because the resolution adopted by the board of mayor and aldermen on November 7th, 1900, which is in words and figures as follows:—

"That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen

deny any liability upon any contract for the use of the water works hydrants:

That from and after August 1900, they will pay a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises," was not an action on the part of the board of mayor and aldermen which assumed to abrogate or take away "any of the rights of the said complainant and it is manifest, that no such intention of effect can be imputed to such resolution, and said bill does not charge any other act of conspiracy or design on the part of the said mayor and aldermen whereby they assume to abrogate and take away the franchise or any contract but merely denies legal liability thereunder; and because the act of the legislature of the State of Mississippi approved on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Company as averred in said bill; and because all of the other averments in said bill contained whereby the said defendant is charged with acts of conspiracy to abrogate and take away the franchise and contract rights of the complainant in contravention of the Constitution of the United States are
73 vague and indefinite and constitute no ground for relief.

3rd. Because the provisions in said contract whereby the exclusive right is given to Samuel R. Bullock & Company and their associates to erect and maintain a system of water works in the city of Vicksburg for supplying the city and its inhabitants with water contrary to the public policy of the State, is unauthorized, illegal and void.

4th. The defendant further demurs to the amended and supplemental bill of complaint and for cause of demurrer say-:

That the matters and things in said supplemental bill averred do not entitle complainant to any equitable relief or state any ground of relief cognizable by this court.

Wherefore defendant says that this court has not as appears ny said bill any jurisdiction to enable it to entertain said bill of complaint.

STATE OF MISSISSIPPI, }
County of Warren, City of Vicksburg. }

Personally appeared before the undersigned a notary public in and for said city, county and State W. L. Trowbridge, mayor of said city of Vicksburg, who after being by me duly sworn states that the foregoing demur- was not interposed for the purpose of delay.

—— ——.

Sworn to and subscribed before me this the -- day of —— 1901.

—— ——,
Notary Public.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

—— ——,
Sol'*d* for Defendant.

The above and foregoing has the following endorsement thereon, to-wit: No. — Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg. Demurrer. Filed April 30th, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.

Defendant's Plea.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
74 THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

The plea of the defendant The Mayor and Aldermen of the City of Vicksburg to the bill of complaint exhibited against them says:—(not waiving the demurrer herein filed)

The defendant, The Mayor and Aldermen of the City of Vicksburg by protestation not confessing or acknowledging all or any part of the matters and things in said bill mentioned to be true *and* in such manner and form as the same are therein set forth and alleged *to* plead thereto and for plea say-:

That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in said bill make, execute and deliver a deed of trust "conveying all franchises, ordinances and contract and other property of whatsoever kind or nature" that the said complainant was particular in appending as exhibits copies of all other writings referred to, but did not append a copy of the said dded of trust executed by the said water supply company as aforesaid conveyed the property described therein as follows:—"All of its real and personal property, goods and chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pump houses, stand pipes, reservoirs, machinery pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversions and the reversions, remainder and remainders tolls, rents, issues, income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water works company now has and can exercise or shall hereafter acquire and possess.

And, also, all the estate, right, title, interest, property, possession claim and demand whatsoever, as well in equity as in law of the water company of, in and to the property above described or hereafter acquired, and each and every part and parcel thereof, with appurtenances.

That afterwards as averred *in* said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendant now pleads that the contract made with Samuel R. Bullock & Company as averred in said bill, was not embraced in said, description and no interest in or to the same was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendant.

That the so-called quit claim whoch was executed on the 18th day of October 1900, and which was signed *as* by Whitney Conant, president of the Vicksburg Water Supply Company, as is averred in said bill and is appended as Exhibit "G" falsely states, the description of the property whoch is contained in said deed of trust.

That the said Conant, president, and W. E. Snow, secretary, had no authority whatever from the said Vicksburg Water Supply Company to make any such quit claim.

That upon its face it appears "that all of the corporate franchises privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quit claim deed, sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time, a defunct organization, without the right to exercise any corporate function whatever, all of which matters and things, the said defendant avers, to be — and is ready to verify, and pleads the same to said bill and prays judgment whether *he* ought to make further answer to the said bill. And for further plea in this behalf the defendant says:—

2nd. That it is not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance between them to organize and create a water works company and to sell and assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof and now pleads that by the 5th section of said contract it is provided as follows:—"That the said Samuel R. Bullock & Company their associates, successors and assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder, provided that the said assignment shall not invalidate or effect the bond required by section 7 hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said board of mayor and aldermen shall pass and enact such further and other ordinances in favor of the said corporation as may be necessary

to invest in the said corporation the rights and privileges
76 hereby granted."

That afterwards, to-wit: on the — day of —— in pursuance of the authority conferred by this section the said Samuel R. Bullock & Company did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company to which said corporation said contract was assigned by the said Samuel R. Bullock & Company and became bound with the consent of the said mayor and aldermen to the terms of said contract:

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock & Company to a single corporation to be by them used — organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company had no power or authority to assign said contract either by said deed of trust or otherwise to any one, and the said defendant has not approved or consented to any assignment by said Vicksburg Water Supply Company of said contract all of which matters and things defendant avers to be true and pleads the same to said bill and prays a judgment of this court whether it ought to be compelled to make further answer to said bill.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Personally appeared before the undersigned a notary public in and for the said city, county and State, W. L. Trowbridge, mayor of the said city of Vicksburg, who being by me duly sworn on oath states that the matters and facts in the foregoing plea are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of City of Vicksburg.

Sworn to and subscribed before me this the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sols. for Defendant.

77 The above and foregoing has the following endorsement thereon to-wit: Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg.—Plea and answer.—Filed April 30th, 1901.—L. B. Moseley, clerk. C. D. Banks, D. C.

Plea to the Jurisdiction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

For further plea in this behalf the defendant pleads and says:—

That this court is without jurisdiction to hear and determine the matters in controversy raised by said bill of complaint—

Because: all of the questions *in* involved in said controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendant against the complainant on the — day of —— and is now there pending:

That it appeared from complainant's bill herein filed that the only matter i*h* controversy between the complainant and the defendant is, as to whether the contract made with Samuel R. Bullock & Company and his assigns as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant:

That no act is alleged by the complainant as having been done by the State of Mississippi or this defendant which in any way affects the questions of said la*i*bility or has any effect or was contemplated to have such effect upon said contract.

That said suit was instituted in the chancery court as aforesaid by a bill of complaint filed by these defendants, a copy of which is here*by* appended.

That the said chancery court has jurisdiction of the questions raised by said bill and that this honorable court is without jurisdiction to hear and determine the same.

All of which things the said defendant avers to be true and pleads the same to the jurisdiction of this court.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

78 STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg.

Personally appeared before the undersigned a notary public in and for said city, county and State, W. L. Trowbridge, mayor of said city of Vicksburg, who being by me duly sworn on oath states that the *n*atters and facts stated in the foregoing plea are true and correct as therein stated, and that this plea is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

Sworn to and subscribed before me this the 6th day of May, 1901.

P. L. HENNESSEY,
Notary Public.

[SEAL.]

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Sol*d.* for Defendant.

The above and foregoing has the following endorsement thereon to-wit: Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg.—Plea to the jurisdiction—Filed, April 30th, 1901 L. B. Moseley, clerk, C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.—

Motion of Complainant to Strike from the Files Defendant's Demurrers, Pleas, and Answers.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the complainant in the above styled cause and moves the court to strike from the file the pleas, demurrers and answers in this ca*u*se because all of said pleas, demurrers and answers are improperly pleaded.

S. S. HUDSON,
Att'y for Complainant.

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Company *vs.* Board of Mayor and Aldermen of Vicksburg.—Filed June 3rd. 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

Defendant's Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

79 VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The Answer of the Mayor and Aldermen of the City of Vicksburg to the Original and Supplemental Bill of Complaint Exhibited against Them in This Court by the Complainant Named Therein.

For answer to so much and such parts of said bill as they are advised it is material or necessary for them to answer these respondents say:

They admit that the board of mayor and aldermen on November 7th 1900, adopted a resolution which is in words and figures as follows: That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water works hydrants: that from and after August 1900, they will pass a reasonable compensation for the use of said hydrants.

That the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises. But respondents say that this action on the part of the board of said mayor and aldermen "did not assume to abrogate or take away" any of the rights of the said complainant existing by virtue of the alleged contract and it is manifest that no such intention or effect can be imputed to such resolution.

That the said resolution does not seek to destroy or impair any contract but merely denies legal liability thereunder; that the act of the legislature of the State of Mississippi approved on the — day of —— does not impair the obligation of the contract made with Samuel R. Bullock & Co., as averred in said bill.

That the averments in said bill in this regard do not constitute any ground for relief cognizable within the jurisdiction of this court; that complainant has not averred and set forth in its bill any act having the effect to impair the obligation of said contract and this court is therefore without jurisdiction to hear and determine the matters in said bill contained,

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(The matter enclosed between rules cancelled across the face with pencil.)

and they crave that they may have the same benefit of objection to said bill on said grounds as if formally demurred to and pray judgment of the same accordingly.

80 Respondents say that all of the questions involved in this controversy between said complainant and said defendant were taken cognizance of by the chancery court of Warren county, Mississippi, wherein a suit was instituted by the defendants against the complainant on the — day of —— and is now there pending.

That it appears from complainant's bill herein filed that the only matter in controversy between the complainant and the defendants is, as to whether the contract made with Samuel R. Bullock & Co., and his assigns, as aforesaid has been transferred to the said complainant and whether the same is now in force against this defendant.

That no act is alleged by the complainant as having been done by the State of Mississippi or these defendants which in any way effects the questions of said liability or was contemplated to have such effect upon said contract. That a copy of the bill of complaint is in said suit instituted in the chancery court aforesaid is herewith filed as Exhibit "I."

That the said chancery court has jurisdiction of the questions raised by this complainant's bill and that this honorable court is without jurisdiction to hear and d-termine the same; all of which things the defendant avers to be true and pleads the same to the jurisdiction of this court and prays accordingly, and as if formally pleaded.

These respondents admit that there is a provision in the contract made between the city and Samuel R. Bullock and Co., whereby the exclusive right is given to Samuel R. Bullock & Co., their successors and assigns for the period of thirty (30) years to maintain a system of water works and to supply said city and its inhabitants with water; that said provision is in words as follows: "That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Co., their associates, successors and assigns, of erecting, maintaining, and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares, and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territory as may
81 now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other condaits and erecting hydrants and other apparatus for conducting and furnishing *and* adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to said system from time to time during the period in which this ordinance shall be in force."

These respondents nevertheless say that no power was *even* conferred either directly — upon said mayor and aldermen whereby they were authorized to grant by contract, to any person or parsons the exclusive privilege for any period of time to furnish and supply said city and its inhabitants with water. That said provision in said contract, is unauthorized, illegal and void and respondents submit that so much and such parts of said bill as — set forth in said provision, in said contract, are insufficient to constitute any ground of relief, and they pray judgment thereof, and crave the same benefit of this objection as if formally demurred to.

Respondents further answering say: That on the — day of March 1887 the Vicksburg Water Supply Company did not as averred in bill make, execute and deliver a deed of trust "conveying all its franchises, ordinances and contract together with all other property of whatsoever kind or nature" (That the said complainant was particular in appending as exhibits copies of all writings referred to, but did not append a copy of the said deed of trust.)

That the said deed of trust executed by said water supply company as aforesaid, convey- the property described therein as follows: "All of its real and personal property, goods, and chattels now owned

or which may be heresfter acquired by it including its lands, water works, buildings, pump houses, stand pipes reservoirs, machinery pipes, mains, hydrants, apparatus and equipme-ts situated in the city of Vicksburg Mississippi, county of Warren together with all and singular, the tenements, hereditaments and appurtenances thereunto b-longing or in any wise appertaining and the reversion and reversions, remainder and remainders tolls, rents, issues, income and profit accruing therefrom also all and singular the company franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And also all the estate, right title, interest, property, possession claim and demand whatsoever as well in equity as in law of the water company of, in and to the property above described or hereafter ac-
82 quired and each and every part or parcel thereof with appurtenances."

That thereafter as averred in said bill said deed of trust was foreclosed and the property therein described was sold to the complainant and the defendant now pleads that the conyract made with Samuel R. Bullock & Company as averred in said bill, was not embraced in said description in or to the same — was by said sale conveyed to complainant and the said complainant did not thereby acquire any right against the defendants.

That the so called quit claim deed which was executed on the 18th day of October, 1900, and which was signed by Whitney Conant, president of the Vicksburg Water Supply Company, as averred in said bill and is appended as Exhibit "G" falsely states the description of the property which is contained in said deed of trust.

That the said Conant, president and W. E. Snow, secretary had no authority from said Vicksburg Water Supply Company to make any such quit claim.

That upon its face it appears "that all of the corporate franchises, privileges and rights which the Vicksburg Water Supply Company had or could exercise," had been before the date of said quit claim deed sold at foreclosure under said deed of trust, and that the Vicksburg Water Supply Company, was at the time a defunct organization without the right to exercise any corporate functions whatever, all of which matters and things the said defendant avers to be true and is ready to verify, and pleads the same to so much and such parts of said bill and prays judgment whether *he* ought to be compelled to make further answer to said part and pleads the same benefits hereof as if formally pleaded.

Respondnets further say; that it — not true as averred in said bill that the said Samuel R. Bullock & Company were empowered by said contract and ordinance between them and the said defendants to organize and create a water works company and to sell and assign said contract and ordinance to any water company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and pro-

visions thereof and now says that by the 5th section of said contract it is provided as follows:

"That the said Samuel R. Bullock & Company their associates, successors and assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired thereunder, provided
83 that the said assignments shall not invalidate or effect the bond required by section — hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations and the said mayor and aldermen shall pass and enact such further and other ordinances, and do and perform such other acts including the re-passage of this ordinance in favor of the said corporation as may be necessary to invest in the said corporation the rights and privileges hereby granted."

That afterwards, to-wit: on the — day of —— in pursuance of the authority conferred by this section the said Samuel R. Bullock & Co., did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company, to which said corporation said contract was assigned by the said Samuel R. Bullo*xc* & Company, and became bound with the consent of the mayor and aldermen to the terms of said contract.

That by said section it was contemplated and intended that no assignment of said contract should be made except by the said Samuel R. Bullock & Company to a single corporation to be by them organized and the transfer to be approved and accepted by the said city, so that the said Vicksburg Water Supply Company have no power or authority to assign said contract either by said deed of trust or otherwise, to any one, and the said defendant has not approved or, consented to any assignment by Vicksburg Water Supply Company of said contract, all of which matters and things defend-a-*ts* aver- to be true and pleads the same to such parts and so much of said bill and prays a judgement of this court whether it ought to be compelled to make further answer to said parts of said bill and crave- benefit hereof as if formally pleaded.

These respondents further say: That by the 14th section of the contract averred in said bill to have been entered into between the complainant and these respondents by ordinance adopted on the 18th day of November 1886 it *id* provided as follows:—

"Be it further ordained That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Samuel R. Bullock & Company their associates, successors and assigns by virtue of the terms and conditions of this ordinance, the said mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually — and caused to be collected upon
84 the tacable property of said city a special tax to be known and designated as the water works tax sufficient to meet and

pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations shall be paid and discharged."

That there was no warrant or authority on the part of said mayor and aldermen to make any such provision or contract; that said stipulation is in contravention of the charter of said city and is illegal and void so that said contract is wholly without effect all of which matters and things respondents aver to be true and plead the same to said part of said bill and pray the judgment of this court whether *it* ought to make further answer thereto, and crave benefit hereof as if formally pleaded.

Respondents deny that on the 19th day of November 1886, the said city of Vicksburg received any competitive bids for the erection of water works in said city and they now show the fact to be that a corporation then known as the Vicksburg Water Works Company a short while before said date made overtures to said city and proposed to enter into a contract for the building of water works and that about that time the said Samuel R. Bullock & Co., also proposed to enter into a contract with said city for said purpose; that a contest arose between these two parties in their endeavors to obtain such a contract from said city; that their propositions were in writing and open and that it was at this stage of the discussion that it was proposed that the consideration of said question should be deferred to a special meeting and all the parties were notified to present bids. That in point of fact no other bids were offered and the board proceeded to consider the propositions of the two parties already made and thereupon awarded said contract to Samuel R. Bullock & Company.

Respondent- further answering show:—That by the 25th section of the charter of said city it is provided that the board of mayor and aldermen should not make any contract involving certain expenditures except upon advertisement for sealed proposals.

That by the letter and spirit of said provision the power to make any contract for a supply of water could only be exercised by said mayor and aldermen after an advertisement for bids for same and in pursuance of the bids:

Yet respondents say that said mayor and aldermen did not advertise for bids for a contract to supply water, as required by said charter and that the contract made with Samuel R. Bullock
85 & Co., was not made in pursuance of any such advertisement so that respondents say that said contract so made was unauthorized and is illegal and void, which facts respondents aver to be true and plead the same to said parts of said bill and prays judgment and craves the benefit thereof as if formally pleaded.

Respondents further answering say:—That by the twelfth section of said conyract it is provided that the property and business of said water works plant should be exempt from taxation for the period of five years and thereafter should not be assessed for more than fifty thousand dollars ($50,000): that said provision is unconstitutional

and void and in consequence said contract is unauthorized and illegal.

Respondents admit the passage of the ordinance on the 19th day of November 1886, a copy of which appears as Exhibit "B" to complainant's bill but they deny that the same *either* when accepted by the said Samuel R. Bullock & Co., constituted a valid contract between said Bullock & Co., and respondents. They admit that said alleged contract was assigned by said Bullock & Co., to the said Vicksburg Water Supply Company, which latter company they deny now to be a going concern, but aver the same is defunct without assets, prop-rty, franchises or organization and that it has been since the 8th day of August, 1900.

These respondents admit that on the 20th day of November, 1900 it received the notice marked Exhibit "H" to said bill, wherein it is asserted that the Vicksburg Water Works Company claimed to own as assignee the contract made with Samuel R. Bullock & Co., and gave notice that said company had agreed to be bound by the terms of said contract.

These respondents now show to the court, that long prior to said date it had been currently reported that said water works company claimed not only to own said plant but also was subrogated to the rights of Samuel R. Bullock & Co., under said contract; that in consequence thereof the mayor of the city of Vicksburg addressed several communications to said water works company requesting to know by what authority and by what right it claimed to own said water works and assume — assert that the city of Vicksburg was bound to it by the terms of said con*y*ract. That the resolution which is appended to said bill as Exhibit "I" was introduced in said board on the — day of September, 1900, and was pending before said board until the 13th day of November, 1900; that during all of said time complainant refused to make any reply to the said communications. It pretended that it was impossible to make answer thereto it being declared to said board in open session — its con-
86 stituted representative as the reason for such failure that one of the directors was in Paris and another in St. Louis; although the muniments of its title, such as it was were already in existence and were well known to complainant at that time.

These respondents deny that the water which has been furnished by said water works company since they acquired the ownership thereof has been "good wholesome water fit for all purposes of domestic or manufacturing purposes." On the other hand they aver that said water has for the most part been charged with mud, sediment and other deleterious matter injurious to the health of the people who use the same and unfit for domestic use.

They deny the said Vicksburg Water Works Company has kept and maintained a pressure upon its mains to the extent stipulated and required in the contract with Samuel R. Bullock & Co. That for the failure of said company to comply with said contract in respect of the quality of the water to be furnished and in respect of

the pressure required to be maintained upon said mains these respondents say that complainant is not entitled to any relief by virtue of its terms; and that these respondents are released from its obligations.

Respondents say that it is immaterial whether the said city has received for the past fourteen years without complaint, water from the Vicksburg Water Supply Company of a like character with that furnished by the Vicksburg Water Works Co., but they deny that the water which has been furnished by the Vicksburg Water Works Company is of as good quality as that provided by the old company. However that may be these respondents are charged with a trust to the people of the city of Vicksburg and if their predecessors have been false to their duties heretofore and failed to discharge their obligations to the public it is no reason or excuse that the present board of mayor and aldermen should continue a dereliction of its duty.

It has been the history of the corporations which have acquired and seized upon the public utilities that they have sought to evade as far as possible their liabilities and to incur the minimum of expense in the exercise of the public privileges possessed by them and have notoriously sought to press to the furthest limit their exaction from the public and their encroachments and monopoly of
87 franchises, and the history of said complainant in dealing with the city of Vicksburg is not an exception to the general rule.

Respondents deny that they have arbitrarily, unjustly and illegal-proceeded to adopt an ordinance and a resolution assuming to abrogate and take the franchise and contract rights of the complainants as averred *iterum iterumque* in complainants' bill.

They deny that the resolution referred to was adopted in pursuance of any purpose or desire to become the owners of said water works.

Your respondents admit *that* the averments in said bill that an act of the legislature was passed authorizing the city of Vicksburg to issue bonds for the purpose of constructing a city hall and a sewerage system and also for the purpose of either purchasing or building a water works system and authorizing the issue of one hundred and fifty thousand dollars ($150,000) for the latter purpose, but respondent- say the question of liability of the city to complainant by virtue of the contract entered into with Samuel R. Bullock & Co., which is raised by said resolution is altogether aside from the scheme and purpose of becoming the owners by purchase or otherwise of a system of water works they say that said alleged contract with Samuel R. Bullock & Co. imposes upon the inhabitants of Vicksburg and its corporate authorities an onerous and extorti-nate burden, that no such contract would now be made with the said Vicksburg Water Works Company or any other company at the rates prescribed in said ordinance, that they far exceed the average price charged for water in cities situated in like condition and circumstances to Vicksburg.

That the question of liability of said city to complainant does not depend upon said act of the legislature; that the resolution adopted by said board was not adopted in pursuance of said act; that whether the city is obligated under said alleged contract is a question which is not effected by or dependent on either the resolution of said board or said act of the legislature; that it is immaterial whether the said act of the legislature had been passed or not or whether your respondents desire to become the owners of water works, it would still be an- is the obligation on the part of these respondents in the discharge of their public duties, to deny that they are bound to said complainants by said contract, for they are informed and believe and now charge the fact for the many reasons herein set forth that no liability exists on the part of said city by reason of said contract.

88 Respondents further show that they have proceeded with this matter conservatively and justly towards the complainant; that it was after mature deliberation and upon the advise and opinion of two legal firms and upon the opinion of the city attorney that they were not bound by said contract, that the resolution in question was by them adopted.

That said resolution upon its face provided that reasonable compensation should be paid to the complainant for the use of water provided by hydrants for fire purposes.

Respondents admit that in pursuance of said act of the legislature an election was held to determine whether bonds should be issued for the purpose of building a city hall, of constructing a sewearge system and of buying or building a water works, but they deny that they have at any time or in any way by reason of said election or otherwise confederated or conspired with any one to injure or destroy the credit of the Vicksburg Water Works Company, or that they have assumed to abrogate or take away the franchise and contract rights of said company or have persistentl- and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

That the averments in said bill in this respect as contained in the thirteenth, fourteenth and fifteenth paragraph- and particularly in the thirteenth paragraph if predicated of said resolution evince a rare capacity for distortion if such a resolution could be capable of such distortion. Said averments particularly in paragraph thirteenth, these respondents, say are mere "words" dealing in vague and indefinite generalities that are but a crude adaptation of certain judicial utterances, which were employed as legal conclusions and deductions from the proof of facts in a certain case. If said complainant means to charge these respondents with any other act of conspiracy or otherwise to injure the complainants than the adoption of said resolution then these respondents once and for all deny each and singular all of said imaginary acts.

They deny that they have done any acts for the purpose of dis-

abling the complaina-t from carrying on its business or to compel it to sell its property at an arbitrary price or to cast a cloud upon its title.

Respondents admit that on the 7th day of November a res-
89 olution was adopted by them as averred in the sixteenth paragraph of said bill; but they submit that it is a gratuitous assumption on the part of complainant to designate it in the several parts of said bill as "a resolution and an ordinance." It is to be known by its terms and its import is to be gathered from its face and its character and purpose cannot be changed by any adroit appellation by which it may be designated.

Respondents say that the "wreck and ruin" which may be impending to said water works should "said act of the legislature and said resolution be permitted to stand" as averred in the said bill is no legal ground to question the validity of either said act or resolution.

That the consequences which complainant must face flow from the measure of its legal rights; dependent upon the sole question as to whether any contract exists between said city and said complainant.

Respondents deny that said resolution was adopted by them, and that the suit in the chancery court of Warren county for cancellation of said contract was instituted by them in pursuance of said act of the legislature and that they were done either to injure the property of complainant or to coerce it to sell said works at an inadequate price; they say that said act authorizing the issuance of bonds to build water works provided also for the construction of a sewerage system, but upon the condition that said city should own its own system of water works which they were authorized either to purchase or erect at its own cost; that said act merely confers authority upon respondents which is optional with them but is not mandatory nor obligatory upon them to take such action; they say that said bill does not charge that said city intends to build any works or has taken any action for that purpose. In fact respondents say that the wisdom and policy of building any works cannot be considered and determined until it be first ascertained whether they are bound to complainant by said contract.

That before the question of building a sewerage system and water works can be obtertained by them they deem that it is proper, that, their should first be settled their liability if any under said contract: they consider that it is their duty as public servants to test said question, not only, because of the onerous terms of said contract but also because the public welfare requires that said question be settled for they might justly conclude that it would be unwise to build a system of water works in case it should be decided that they are bound by said contract though they may have the legal right to build.

90 That while they consider it is desirable to build a sewerage system and as a condition they should own the water works,

and that it is desirable that the plant of complainant should be purchased by said city at a reasonable and liberal price, yet they say that the very question of the liability of the city under said contract renders any negotiations with said complainant looking to such purchase impracticable that they owe it as a public duty to have the question of their liability determined before any further effort be made to purchase said works from said complainant. So that they say, that said resolution was not adopted in pursuance of said act of the legislature, or by virtue of it, but solely to test said question, as an official duty which they owe, first, that they should not acknowledge a burdensome liability upon the tax payers which they do not believe to exist, and second, that they might act advisedly in determining what action if any should be taken by them in the exercise of the authority, to build or buy, a water works plant.

Respondents say that while the averment in said bill, that the amount of bonds authorized to be issued for water-works, to-wit: the sum of one hundred and fifty thousand dollars ($150,000) is an inadequate sum for the price of complainant's plant is immaterial, yet they deny that it is an inadequate price and they aver and charge the fact to be that said plant is not worth more than one hundred thousand dollars ($100,000) if that: that a new plant in many respects superior to the present one, they are informed can be built for one hundred and twenty five thousand dollars ($125,000): that the old plant has been in operation for fifteen years or about one third of the average life of such plants, while all the boilers, engines and pumps belonging to it are nearly worn out and are of little value: they deny that they have done any act for the purpose of depreciating the value of said property or to coerce it to sell its property at an inadequate price.

Respondents say that while they have denied their liability under said contract yet they have offered to pay complainant a reasonable and just compensation for the use of hydrants. But that which is reasonable and just to common mortals seem- not to be palatable to the greed of a monopoly.

They say that the average gross income of said works now exceeds thirty thousand dollars ($30,000) per annum and its net income is more than twelve thousand dollars ($12,000) of which
91 the payment by the city under said contract amounts to about eight thousand dollars, ($8000).

That the proposition of the city to pay said complainant pending the litigation to test its liability fifty dollars ($50.00) for each hydrant would amount to six thousand dollars ($6,000.) there being one hundred and twenty two hydrants and so they emphatically deny that any act done by them or proposed to be done by them would disable complainant from carrying on its business "or work wreck and ruin" upon its property, aside from the natural consequences which might follow if it be found that said city is not bound by a contract with complainant.

Respondents admit that they addressed a communication at the instance of the advisory board asking the complainant if their water works could be purchased. The reply of said complainant to said inquiry is charasteristic, a copy of which is herewith appended marked Exhibit "—."

Respondents further answering say that they are not advised how nor when the office holders and seekers from the mayor down dragged the water works into politics; that all of the matters stated in the 19th paragraph of said bill in this respect are wholly immaterial irrelevant and insufficient.

That these respondents deny that anything was ever stated in this regard by said mayor or other office holder by the authority of these respondents or in pursuance of any act of theirs; and as representatives of said municipal corporation. They are not responsible nor are they to be held by any declarations of individuals whether they be office holders or office seekers: that there were no statements or publications during said canvass which were false, and though it is immaterial and irrelevant matter, these respondents nevertheless state the fact to be that while a majority of the said board of mayor and aldermen were in favor of adopting the resolution which was passed in November that nevertheless there were certain members of said board who opposed the adoption of said resolution in the interest of the said complainant, and not in the interest of the public.

That the averments in said bill to the effect that publications and declarations were made by candidates for office that if elected they would bring suit to cancel said contract is an absurd charge upon its face for it was long before said election was held that the
92 then board of mayor and aldermen adopted said resolution whereby they deny their liability under said contract, and that it was in pursuance of that resolution that a suit was instituted to cancel said contract.

Your respondents say that while the matters averred in the 20th and 21st paragraphs of said bill are wholly irrelevant and immaterial nevertheless they are informed and believe and charge the fact to be that one, M. O. Crumpler who was the agent and promoter of the Water Works Company, complainant, was advised in the city of Vicksburg by the then superintendent of the Vicksburg Water Supply Company of the purpose to authorize the city to buy said works; that he was informed of the details of said proposed litigation.

Respondents deny the vague and indefinite charges that inflam-atory and untruthful articles were written against said water works company and that rumors of damaging effect which were utterly false were circulated by them; though sheltered in indefinite terms and although irrelevant and immaterial they deny that they were written, circulated or were put afloat by these respondents, or their officers or agents or in pursuance of any conspiracy against said company.

These respondents say that the averments in the 22nd paragraph

while they are immaterial and irrelevant are wholly untrue and they deny that any member of said advisory board ever made any proposition to buy said water works for himself or his associates.

They admit that Mr. E. C. Carroll, a gentleman of probity and of honor was requested by a foreign corporation to open negotiations for the purchase of said works, that he, the said E. C. Carroll had no interest whatever in said negotiations.

Your respondents say, of this matter, that they never heard of it until after complainant had filed his bill.

They say it is true that a suit was instituted in the chancery court of Warren county, Mississippi, against complainant by the City of Vicksburg to have such contract declared void and it is true that it was done at the instigation of said board of mayor and aldermen because it goes without saying that the acts which one may do are instigated by himself, but it is not true that said suit was instituted in confederation with said leading citizen as insinuated in said paragraph.

Your respondents say to the 25th and 26th paragraphs of said bill that the matters averred and contained are irrelevant immaterial and multifarious and constitute no ground for relief and the
93 legal sufficiency thereof is now submitted to the court as if specially demurred to.

Your respondents admit for the use of fire hydrants a price was stipulated to be paid by the mayor and aldermen to the said Samuel R. Bullock & Co.; they deny however that the amount which is due under said ordinance was due to the complainant, and they deny that these respondents offered to pay to the said complainant an inadequate amount or price for the use of said hydrants.

They deny that their proposition to pay a reasonable compensation to the said complainants was "a scheme by which they confederated, conspired and endeavored to coerce and force complainant into an act whereby the ordinance would be annulled." It is an absurd legal proposition that the offer by the city to pay the complainant $50.00 a year for a hydrant pending the litigation as to whether there was any contract would amount to any waiver of the rights of their property and it was perfectly competent for the said complainant to have accepted such payment on account.

These respondents show the fact to be that during the month of January, 1901, the mayor and aldermen by resolution referred water works bills to a committee, that said committee sought to have an agreement with the management of said water works company as to what should be paid by way of a reasonable compensation pending said litigation: that said company refused absolutely to take anything less than the amount which was stipulated in said contract although they proposed to give bond to cover whatever excess the court might find in such payments: that at the last meeting of said committee the superintendent of said company and its attorney were present and as they had refused to make any other concession

the report of said committe- which is set forth in said bill was adopted.

That at that time they did not object to the form of said report and that their rights would be concluded by the acceptance of the $50.00 which respondents show is the prevailing rate at Shreveport, Natchez and Meridian.

They admit that said report was adopted by the board of mayor and aldermen and that there was a reservation that said payments should not effect the rights of said city, and it necessarily and legally followed that the rights of the complainant would not also be thereby impaired. However this may be, on the next
94 succeeding day, to-wit on February 13th, 1901, there appeared in one of the papers of the city of Vicksburg the following paragraph.

"There appeared an article in our paper yesterday to the effect that it was reported that Mr. Crumpler stated that he would cut off public hydrants, after reasonable notice was given to the city and underwriters, if the city did not pay the company's bill due on the first of January. Mr. Crumpler authorizes us to say that what he stated was substantially as follows: "The city's proposition to pay the company was only a partial payment and that it was so worded and hedged about that if accepted by the company it would make the company commit and act that would be a false position with reference to the contract with the city, and might be construed the breaking of the contract, and for those reasons the company could not accept under the conditions offered by the city, and that if the city continued to refuse to pay except under those conditions it would soon put the company in a position that it could not furnish water any longer for fire protection, and that it did not want to do this, but would be forced to do so."

That at once and before the filing of this bill and some days before the fiat was obtained for the injunction which was issued in this suit, to-wit on February the 14th, 1901, the mayor of the city of Vicksburg seeing said paragraph and being advise- for the first time that the said complainant objected to said resolution on that ground addressed and delivered to Mr. M. O. Crumpler the following letter.

Mr. M. O. Crumpler supt. of the Vicksburg Water Works Co.

DEAR SIR: I notice in the Evening Post what purports to be a statement from you to the effect, that the offer of the city to pay you $50.00 each for the use of fire hydrants, was made upon such conditions as you could -ot accept. It is my understanding and I am so advised also by the city attorney, that it was not the intention of the mayor and aldermen to impose any conditions by which your rights, in the controversy with the city should be in any way affected. I am therefore prepared to take your receipt for said payments stipulating that your rights in the premise- shall not be impaired or waived by accepting payment as aforesaid.

Very respectf'y,

(Signed) W. L. TROWBRIDGE, Mayor.

That this communication was made in a spirit of fairness to the said complainants, that they might be amply compensated pending said suit for the use of their fire hydrants.

The complainant has charged these respondents with "endeavoring to disable it from carrying on its business, with destroying its credit and the value of its property, with coercing it to sell its water works for an inadequate price and of otherwise carrying on an unlawful conspiracy and doing other illegal and unlawful acts in furtherance of said conspiracy" but has not specified a single act on the part of the city evincing such purpose, and while said charges are vague and indefinite and do not call for an answer in the manner and form in which they are pleaded, nevertheless these respondents, say, as to such charges, that they deny, that they have done or authorized to be done by any one, any act evincing any such purpose or desire. That the city of Vicksburg is responsible in its corporate capacity as a municipality for the acts of its officers done by them under the guise and color of authority but not otherwise.

Respondents further answering say that the matters and things contained in complainant's amended and supplemental bill are irrelevant immaterial and afford no ground of relief to the complainant and their legal sufficiency is now submitted to the court and judgment thereof is craved as if formally demurred to, and respondents further answering say:—That there does not appear any ground for the equitable relief sought by the complainant by reason of the matters and things averred in its original and amended bills:—and now having fully answered defendants pray to be dismissed hence with their reasonable costs and with damages for the wrongful suing out of said injunction, a bill of particulars whereof is herewith filed.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg,
Western Division of Southern District of Mississippi.

Personally appeared before the undersigned an U. S. commissioner in and for said western division of southern district of Mississippi, W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn on oath states on behalf *onf* the defendants that the matters and things stated in the foregoing answer as of his own knowledge are true, and correct, as therein stated and such as are stated on information and belief he verily believes to be true, and that the matters affirmatively alleged and pleaded are true in fact and that this answer is not interposed for the purpose of delay.

W. L. TROWBRIDGE,
Mayor of the City of Vicksburg, Miss.

Sworn to and subscribed before me this the 21st day of June, 1901.

JOSEPH H. SHORT,
United States Commissioner.

[SEAL.]

We hereby certify that in our opinion the demurrers and pleas set forth in the foregoing answer are well founded in point of law and that same are not interposed for delay.

MAGRUDER, BRYSON & DABNEY,
Sols. for Defendants.

The above and foregoing has the following indorsement thereon, to-wit: No. 41. Vicksburg Water Works Co., *vs.* The Mayor and Aldermen of the City of Vicksburg.:—Answer.—Filed January 21st, 1901, L. B. Moseley, clerk, C. D. Banks, D. C.—Magruder & Bryson, attorneys at law, 122½ South Washington street, Vicksburg, Miss.

Defendant's Notice of Damages Claimed.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Damages.

To the Vicksburg Water Works Company:

You will take notice that in case said court shall sustain the motion to dissolve the injunction in this case the defendants will claim damages for the wrongful suing out of said injunction as follows:—

1st. To attorneys' fees $3500.

2nd. To amount paid complainants in pursuance of said injunction $2850.

3rd. To damages for unlawful interference with the duties of said defendants in promoting and conserving the health and comfort of the inhabitants of said city $2500. and for such other and general damages as defendants may lawfully claim.

W. J. VOLLER, City Att'y,
MAGRUDER, BRYSON & DABNEY,
Sols. for Def't.

97 The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Co., *vs.* The Mayor and Aldermen of the City of Vicksburg. Particulars of damages. Filed June 21st, 1901, L. B. Moseley, clerk, C. D. Banks.

Motion to Dissolve Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The defendants now come and move the court for a dissolution of the injunction heretofore issued against them and for ground of said motion say :—

1st. Because said injunction was improvidently issued.

2nd. Because the bill and amended bill filed by said complainants do not raise any question or propound any demand or right cognizable within the jurisdiction of this court.

3rd. There is no equity upon the face of said bills.

4th. Because the injunction is in many respects indefinite and vague and so uncertain that it is not possible to determine what acts are embraced in said injunction.

5th. Because said injunction should be dissolved by reason of the matters of law and fact set forth in said defendants' answer to said bill.

W. J. VOLLER,
MAGRUDER, BRYSON AND DABNEY,
For Motion.

The above and foregoing has the following endorsement thereon, to-wit: 41. The Vicksburg Water Works Co., *vs.* The Mayor and Aldermen of the City of Vicksburg.—Motion to dissolve injunction—Filed June 21st 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Complainant's Motion to Strike from the Files the Answer, Demurrers, and Pleas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

98 To W. J. Voller, Esq.; Mess. Magruder, Bryson & Dabney, defendant's solicitors:

You will please take notice that the Vicksburg Water Works Company herein will, on July 1st, 1901, being the first day of the next July term to be holden in Vicksburg, Miss. at the opening of said

court or as soon thereafter as counsel can be heard, make application for an order to take from the files the paper purporting to be an answer, demurrers and pleas filed by said defendant on the 21st day of June, 1901, and for such other and further order as to the court shall seem just. (A copy of complainant's motion therefor being hereto attached. Dated at Vicksburg, Miss. this 29th day of June, 1901.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

(Copy of Motion Above Referred to.)

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainants,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendants.

Now comes The Vicksburg Water Works Company, the complainant herein and moves this honorable court to take from the files the paper purporting to be an answer, demurrer and pleas filed by The Mayor and Aldermen of the City of Vicksburg, the defendants, in said cause on the 21st day of June, 1901, and for such other and further order and relief as to the court shall seem just, and for the grounds of said motion say :—

1st. That said defendant heretofore to-wit:—on the 30th day of April, 1901, filed a demurrer to the bill of complaint in this cause for want of jurisdiction and that the said demurrer is pending and undertermined.

2nd. That said defendant heretofore, to-wit—on the 30th day of April, 1901, filed a plea to the jurisdiction of this court in this cause and that the said plea to the jurisdiction is pending and undertermined.

3rd. That heretofore on the 30th day of April, 1901, the said defendant filed a plea in bar to said bill of complaint and that said plea in bar is pending and undertermined.

4th That said answer was prematurely filed.

5th. That there is embodied in said answer a plea in abatement.

6th. That there is embodied in said answer a demurrer to
99 the whole bill of complaint.

7th. That ther- is embodied in said answer and plea to the said bill of complaint viz. that there is another suit pending in the chancery court of Warren county, Mississippi, for the same matter, set forth in said bill of complaint.

8th. That there are improperly joined in the said paper filed by

the defendant as aforesaid, demurrers to the whole bill of complaint, pleas in bar to said bill of complaint, a plea in abatement to the said bill of complaint for want of jurisdiction in this court.: and the answer to said bill.

S. S. HUDSON,
A. N. EDWARDS,
Sols. for Complainant.

This cause came on to be heard on the foregoing motion, and the same being considered by the court, it is therefore ordered and adjudged & decreed that the same be over-ruled.

The above and foregoing has the following endorsement thereon to-wit:—41. Filed June 29th, 1901 —L. B. Moseley, clerk.

Motion to Strike from the Files the Answers, Demurrers, & Pleas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes The Vicksburg Water Works Company the complainant herein and moves this honorable court to take from the files, the paper purporting to be an answer, demurrers and pleas, filed by The Mayor & Aldermen of the City of Vicksburg the defendant, on the 21st day of June, 1901, and for such other and further order and relief as to the court shall seem just and for the ground of said motion say:—

1st. That said defendant heretofore, to-wit:—on the 30th day of April, 1901, filed a demurrer to the bill of complaint in this cause for want of jurisdiction and that the said demurrer is pending and undetermined.

100 2nd. That said defendant heretofore, to-wit:—on the 30th day of April, 1901, filed a plea to the jurisdiction of this court in this cause and that the said plea to the jurisdiction is pending and undetermined.

3rd. That said answer was prematurely filed.

5th. That there is embodied in said answer a plea in abatement.

6th. That there is embodied in said answer a demurrer to the whole bill of complaint.

7th. That there is embodied in said answer a plea to the said bill of complaint. viz. that there is another suit pending in the chancery court of Warren county, Mississippi. for the same matter, set forther in said bill of complaint.

8th. That there are improperly joined in said paper filed by the defendant as aforesaid, demurrers to the whole bill of complaint, pleas in bar to said bill of complaint, a plea in abatement to the said bill of complaint for want of jurisdiction in this court, and the answer to said bill.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following endorsement thereon, to-wit: No. 41. Vicksburg Water Works Company, *vs.* The Mayor and Aldermen of the City of Vicksburg.—Motion to take from the files paper purporting to be an answer, demurrers and pleas. Filed June 29th, 1901, L. B. Moseley, clerk, C. D. Banks. D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Motion for Temporary Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes The Vicksburg Water Works Company, the complainants herein, by S. S. Hudson and A. N. Edwards its solicitors and moves this honorable court under the seal thereof directed to the defendants, its officers, attorneys and servants and each of them enjoining and restraining them from assuming to abrogate
101 and take away the franchises and contract rights of said complainant, and from endeavoring to disable said complain— from carrying on its business and to coerce said complainant to sell its water works to defendant whereby it denied liability or seeks to annul or refuse to pay complainant the contract price for water and that said defendant be compelled to pay to complainant for water used by said defendant as per the ordinance price set forth in said bill of complaint, and to continue to do so until this cause is heard upon its merits, that the rights of all parties may be preserved and for such other and further order and relief as to the court seems just.

S. S. HUDSON &
E. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following endorsement thereon to-wit:—No. 41 Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg,—Motion for temporary injunction. Filed June 29th, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Motion to Withdraw Demurrers, &c., and File Answer.

In the U. S. Court for Western Division, Southern District of Mississippi.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN.

The defendants move for leave to file the answer herein, marked filed heretofore by the clerk as of June 21st, and for leave to withdraw the separate demurrers and pleas heretofore filed on April 30th, as the said answer embodies all the matters of defense, which are set forth in said pleas and demurrers.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

The foregoing has the following endorsement, to-wit:—41. Motion. Ent. Order Book No. 1 page 11. Filed July 1st, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Order Allowing the Defendant to Withdraw Pleas, Demurrers, &c., and File Answer.

102 In the U. S. Cir. Court for the Western Division of the Southern Dist. of Miss.

VICKSBURG WATER WORKS
vs.
MAYOR & ALDERMEN. } No. —.

Coming on to be heard the motion to dissolve the injunction herein, and the defendants now having moved the court for leave to file their answer, herewith presented and marked by the clerk, as filed on June 21st, 1901, and to withdraw the plea and demurrer marked filed April 30th, 1901,

It is ordered that leave be granted to file said answer and withdraw said pleas and demurrers but that the question of the jurisdiction of this court to hear the matters in controversy raised by said answer shall be first presented and argued.

This 1st day of July, 1901.

H. C. NILES, Judge.

The above and foregoing has the following endorsement, thereon to-wit:—Vicksburg Water Works Company *vs.* Mayor and Aldermen. Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C.

Order Dissolving Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Term, A. D. 1904, Third Day of July, 1901.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF VICKSBURG.

This cause coming on upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is no Federal question involved in the controversy presented by the pleadings it is therefore ordered adjudged and decreed that said injunction be and the same is hereby dismissed and that execution issue therefor for the costs in this case.

H. C. NILES, Judge.

The above and foregoing order appears in Minute Book No. 1 at page 578 of the official records of this office.

103 Defendant's Claim for Damages.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the defendants and propound their c'aim for damages for the wrongful suing out of injunction herein which has this day been dissolved and move the court to hear and determine the same in accordance with the notice and bill of particulars of the same heretobefore filed and served upon complainant.

VOLLER.
MAGRUDER, B. & D.

The above and foregoing has the following indorsement thereon to wit:—41—Motion. Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Motion to Continue Restraining Order in Force until Appeal is Heard by U. S. Supreme Court.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Now comes the complainant in the above styled cause and moves the court to continue the restraining order in force as granted until the appeal in this cause is heard by the Supreme Court of the United States, or until the further order is granted by this court.

S. S. HUDSON &
A. N. EDWARDS,
For Motion.

The above and foregoing has the following indorsement thereon, to-wit:—41. Vicksburg Water Works Company *vs.* The Mayor and Aldermen of Vicksburg,—Motion to continue restraining order.—Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

104 Petition for Appeal to the Supreme Court of the United States and Order Allowing the Same.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The above plaintiff, The Vicksburg Water Works Company, conceiving itself aggrieved by the order entered on the 3rd day of July, 1901, in the above entitled proceedings, doth hereby appeal from said order to the Supreme Court of the United States and it prays that this its appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said order was duly authenticated may be sent to the Supreme Court of the United States.

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Plaintiff.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF VICKSBURG.

And now to-wit, on the 3rd day of July, 1901, it is ordered that the appeal be allowed as prayed for.

H. C. NILES,
Circuit Judge.

The above and foregoing has the following indorsement thereon, to-wit:—#41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg, Miss.—Petition and order for appeal.—Filed, July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Supersedeas Bond.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Supersedeas Bond.

Know all men by these presents that we, the Vicksburg Water Woarks Company and M. O. Crumpler and S. S. Hudson all of the city of Vicksburg, county of Warren, and State of Mississippi, 105 are held and firmly bound unto the above named Mayor and Aldermen of the City of Vicksburg in the sum of two hundred and fifty dollars to be paid by the Vicksburg Water Works Company for the payment of which, well and truly to be made, we bind ourselves, and each of us, ourselves and each of our heirs, executors and administrators, jointly and severally, firmly, by the- present-.

Sealed with our seals and dated the 4th day of July, 1901.

Whereas the above named Vicksburg Water Works Company has prosecut*ing* and appeal*ed* to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the western division of the southern district of Mississippi.

Now therefore the condition of this obligation is such that if the above named Vicksburg Water Works Company *is* prosecuted said appeal to effect and answer all costs, if it fail to make said appeal good then this obligation shall be void otherwise the same shall be and remain in full force and virtue.

VICKSBURG WATER WORKS CO.,
By M. O. CRUMPLER, Sec. & Tre-s.
M. O. CRUMPLER.
S. S. HUDSON.

Signed and delivered and taken and acknowledged this the third day of July, 1901, before me.

H. C. NILES,
Circuit Judge.

Approved by

The above and foregoing has the following indorsement thereon to-wit:—Bond $250.00—Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Order Continuing Restraining Order until U. S. Supreme Court Renders Decision on Appeal.

United States Court for the Western Division of the Southern District of Mississippi.

Upon the appeal being allowed herein it is ordered that the temporary restraining order herein be continued until the 1st day of January, 1902 or if before then until the decision of the appeal herein by the Supreme Court upon condition however that the complainant diligently prosecute i-s appeal and file a motion at or before the next term of the Suprem- Court to advance the appeal in this cause upon the docket of the Supreme Court of the United States and upon the further condition that the injunction bond heretofore given in this case shall stand and continue in force for any additional liability which may be incurred by reason of this order.

106 The principal and sureties upon said bond now in open court consenting thereto.

Ordered, adjudged and decreed this the 3rd July, 1901, in open court.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon to-wit: Filed July 3rd, 1901. L. B. Moseley, clerk. C. D. Banks, D. C. Ent. Minute Book # 1, page 581 L. B. Moseley, clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

THE VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

Assignment of Errors.

Afterwards, to wit, on the 3rd day of July, in the year of our Lord 1901, at the July term, 1901, of the circuit court of the United States

for the western division of the southern district of Mississippi, at Vicksburg, Mississippi, comes the Vicksburg Water Works Company, by S. S. Hudson and Albert N. Edwards, its solicitors and says, that in the record of proceedings in the above entitled matter, there is manifest error in this to-wit:—

1. The court erred in dismissing the suit and bills of complainant for want of jurisdiction. The allegations of the bills raised questions of the power of the State of Mississippi, and of the city of Vicksburg, to impair the obligation of the contract of said complainant with said city under the act of the legislature of Mississippi, approved the 18th day of March, 1886; and the ordinance of the city council adopted November 18th, 1886, accepted by Samuel R. Bullock & Company for themselves associates and assigns.

First. By the enactment of the act of the legislature of the State of Mississippi approved March 9th, 1901, second, by the resolutions passed by the city council of the said city calling an election upon the question (among others) of issuing bonds to purchase or construct water works and the election of July 3rd, 1901, and the vote thereunder, whereby said proposition was carried, third, by the resolutions adopted by the city council of said city on November
107 7th, 1900, undertaking to annul the said contract and change the hydrants rentals from sixty five dollars ($65.00) to "a reasonable compensation," fourth, by the report of the water committee of said city of February 7th, 1900, and of fifty dollars, ($50) per hydrant from and after the passage of the resolutions of November 7th, 1900.

Wherefore the said Vicksburg Water Works Company prays that the order of the said circuit court of the United States for the western division of the southern district of Mississippi, be reversed, and the said circuit court of the United States for the western division of the southern district of Mississippi, be ordered to proceed to hear and determine the above entitled cause.

S. S. HUDSON &
A. N. EDWARDS,
Sols. for Complainant.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg—Assignment of errors.—Filed July 3rd, 1901. L. B. Moseley, clerk, C. D. Banks, D. C.

Certificate of Judge of the Question of Jurisdiction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

The final decree having been entered herein on the 3rd day of July, 1901, dismissing this suit and the bill and amended and supplemental bill therein:

Now therefore this court in pursuance of the 2nd paragraph of the 5th section of the act of Congress, approved March 3rd, 1891, and entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes;" hereby certifies to the Supreme Court of the United States, for decision, the question of the jurisdiction alone of this court over this cause as follows: Whether this cause presents a controversy which involves a Federal question under the laws or Constitution of the United States.

108 The only question which I considered and decided in dismissing this suit and the bills of complaint is whether a Federal question was involved upon the pleadings.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of the City of Vicksburg.—Order certifying question of jurisdiction to Supreme Coort.—Filed July 4th, 1901. L. B. Moseley, clerk, C. D. Banks, D. C. Ent. M. B. No. 1, page 580, L. B. Moseley, clerk.

Citation and Notice of Appeal to U. S. Supreme Court.

UNITED STATES OF AMERICA, *ss*.

To the Mayor & Aldermen of the City of Vicksburg, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western division of the southern district of Mississippi, wherein The Vicksburg Water Works Company is appellant and The Mayor and Aldermen of the City of Vicksburg *is* respond*ne*- to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States this 3rd day of July, in the year of our Lord, 1901.

H. C. NILES, Judge.

Attest, L. B. MOSELEY, Clerk. [SEAL.]

The above and foregoing has the following indorsement thereon to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg. Citation and notice of appeal to U. S. Supreme Court—Files July 4th, 1901 L. B. Moseley, clerk.

Motion to Advance Cause on Docket.

In the Supreme Court of the United States, October Term, A. D. 1901.

VICKSBURG WATER WORKS COMPANY, Appellant,
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Appellee. } No. 392.

109 Now comes the said appellant, and moves this honorable court, to advance this cause on the docket, and hear it as an early a date as the convenience of the court will permit, and for reasons therefor it states:—

That the only question in this cause is, whether the United States circuit court for the western division of the southern district of Mississippi, has jurisdiction of this cause.

The sole question certified to this court by the circuit judge, is whether the cause presents a controversy arising under the laws or Constitution of the United States.

Respectfully submitted.

JAMES A. CARR,
S. S. HUDSON, AND
A. N. EDWARDS,
Att'ys for Appellant.

In the Supreme Court of the United States, October Term.

THE VICKSBURG WATER WORKS COMPANY, Appellant,
vs.
THE MAYOR AND ALDERMEN OF VICKSBURG, Miss., Appellee.

To W. J. Voller Esq., and Magruder, Bryson & Dabney, attorneys of record for the appellee in the above styled case:

You are hereby notified that the appellant in the above named cause will on the 14th day of October, A. D. 1901 on the meeting of the United States Supreme Court, on that day or as soon thereafter,

as counsel can be heard submit for the consideration of the court the foregoing motion.

JAMES A. CARR,
S. S. HUDSON, AND
A. N. EDWARDS,
Att'ys for Appellant.

To the U. S. marshal to execute.
L. B. MOSELEY, Clerk. [SEAL.]

August 24th, 1901.

Marshal's Return Thereon.

Received this writ August 24th, 1901, executed August
110 28th, 1901, at Vicksburg on W. J. Voller, by handing him a true copy of this writ, and on Magruder, Bryson and Dabney by handing J. C. Bryson a member of the firm, a true copy of this writ.

F. W. COLLINS, Marshal,
By E. C. YELLOWLEY, D. M.

Fees, $4.00.

The above and foregoing has the following indorsement thereon, to-wit:—Returned and filed Oct. 31st, 1901. L. B. Moseley, clerk.

Replication.

United States Circuit Court for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Replication.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer and pleas, (except the plea to the jurisdiction of the court), of the said defendants, for replication thereunto, saith, that he doth and will aver, maintain, and prove his said bill to be true, certain and sufficient in the law, to be answered unto by said defendants, and that the answer, of the said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by this repliant; without that, that any other matter or thing in said bill contained, materially or effectual in the law, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver,

maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Comp't or Repliant.

The foregoing has the following indorsement thereon, to-wit:—Vicksburg Water Works Company, repliant, *vs.* Mayor and Aldermen of Vicksburg.—Filed August 1st, 1901. L. B. Moseley, clerk, by C. D. Banks, D. C.

Order Continuing in Force Temporary Restraining Order.

111 January Term, 1902.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG, MISS.

This day this cause — on *the* be heard on motion of the Vicksburg Water Works Co., to continue in force the temporary restraining order heretofore granted in this cause on the bonf filed and approved—the same being considered by the court, it is therefore ordered adjudged and decreed by the court that the temporary restraining order heretofore granted in this case, be and the same is hereby continued in force on the bond filed and approved, until the decision of the Supreme Court of the United States is had in said cause now before it on a jurisdictional question.

Ordered, adjudged and decreed in open court this 8th day of Jan'y, 1902.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Co., *vs.* Mayor and Aldermen of the City of Vicksburg.—Motion.—Filed Jan'y 8th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

Motion to Require Complainant to Execute New Bond Both for Injunction & Supersedeas.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATERWORKS CO.
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court to require the complainant to execute new bonds in the above styled cause, both as to the injunction in said cause and supersedeas, and shows:

That each of said bonds is signed by the Vicksburg Waterworks Company as principal and M. O. Crumpler and S. S. Hudson as sureties: That there there are no other sureties upon the said bonds or either of them. That the Vicksburg Waterworks Company's property is now encumbered by a deed of trust to secure and indebtedness of $350,000: That said mortgage indebtedness is
112 largely in excess of the value of all of the property owned by said principal excluding the contract with the city of Vicksburg which is now in litigation.

That M. O. Crumpler owns no real estate in the State of Mississippi; that he is assessed with $30.00 of personal property in Warren county, the same being the county of his residence; that defendant is advised and believes that the said M. O. Crumpler has no other property;

That S. S. Hudson the other surety on said bonds is assessed with a small tract of real estate in Yazoo county, State of Mississippi, and with his home in the city of Vicksburg, at a valuation of $2500 and a small tract of land in the county of Warren, assessed at $440. He is also assessed with $1010 of personal property; that defendant is informed and believes that the foregoing is the whole of the property owned by said S. S. Hudson, and that it does not equal the amount of said bonds and the said homestead is exempt from execution.

The pr-mises considered, defendant is advised and believes that the said principal and the said sureties are not worth the face or sums named in said bonds, and that the said bonds are both insufficient and inadequate to guarantee the said defendant against damage. And to the end that the said complainant should be required to give good and sufficient bonds, defendant now prays that the court examine said sureties and ascertain what property they may own, and require the said complainant to execute good and sufficient bonds.

W. J. VOLLER AND
MAGRUDER, BRYSON & DABNEY,
For Motion.

Sworn to and subscribed before me this Jan. 7th, 1902, by J. C. Bryson attorney for def't.

L. B. MOSELEY, Clerk.
C. D. BANKS, D. C.

The above and foregoing has the following indorsement thereon to-wit:—# 41, Vicksburg Waterworks Co. *vs.* Mayor & Aldermen of Vicksburg. Filed Jan. 9th, 1902. L. B. Moseley, clerk C. B. Banks, D. C.

Order Taking under Advisement Defendant's Motion to Require New Bonds.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

This cause coming on to be heard on the motion of defendant to require the complainant to give a new injunction bond and
113 also a new supersedeas bond with good and sufficient sureties, and also on that certain other motion, herein *amde* by defendant to reconsider and set aside the order herein made on the 8th day of January, 1902, continuing the restraining order against said defendant in force until such time *until* the Supreme Court of the United States should pass upon the appeal from a former decree of this court in this cause dismissing the same for want of jurisdiction. It is ordered that said motion be heard and determined as of this term in vacation, within thirty days of this date, with leave to both parties to introduce such testimony as the court may deem proper.

Ordered this 9th day of January, 1902.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—# 41—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg.—Order taking under advisement.—Filed Jan. 9/-902. L. B. Moseley, clerk.

Motion of Defendant to Set Aside the Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. }

Now comes the defendant in the above styled cause and moves the court to set aside the order herein made on the 8th day of January, 1902, continuing in force the injunction heretofore granted until the decision of the Supreme Court of the United States is had in this cause, and for ground for this motion shows:

That according to the terms and provisions of the original restraining order granted herein against the defendant, the said defendant was enjoined and restrained from denying liability or refr*u*ing to pay the said complainant the stipulated price for water under the terms and provisions of a certain alleged contract between the said defendant and com-lainant.

That the said complainant has since said injunction failed and refused to supply water to the said defendant under said alleged contract for the period of — days, and for the period of other
114 days has failed and refused to supply a sufficient quantity of water to furnish adequate protection to its citizens.

That nevertheless the said complainant now asks and demands that the said defendant pay for the said water as stipulated in said alleged contract regardless of whether the same has been supplied or not as stipulated and required by said alleged contract and refuses to allow any offset for the time which it has neglected and refused to supply said water as stipulated and have suggested that complainant would have the right to have certain members of the said board of mayor and aldermen cited to appear before this court on account of the failure and refusal of the said members to ratify and approve the account propounded against the said defendant for the use of the hydrants used by the said complainant in and about supplying the said defendant with water.

The premises considered defendant shows; that said order continuing the said injunction in force compelling defendant to pay for the said water whether the same be furnished or not, is inequitable and unjust and should be set aside and to the end that defendant may have such relief as in equity it is entitled: it now prays that the said order be set aside or so modified as not to compel the said defendant to pay for water which it has not received.

And as in duty bound it will ever pray.

W. J. VOLLER.
MAGRUDER, BRYSON & DABNEY.

STATE OF MISSISSIPPI, }
County of Warren. }

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

Personally appeared before the undersigned, clerk of said court, W. L. Trowbridge, mayor of the city of Vicksburg, who after being by me duly sworn on oath states that the matters and things set forth in the foregoing motion are true and correct as stated.

In testimony whereof witness my signature this the 9th day of January, 1902.

W. L. TROWBRIDGE, Mayor.

Sworn to and subscribed before me this the 9 day of January 1902.

L. B. MOSELEY,
Clerk U. S. Circuit C'rt, S. Dic. of M.
C. D. BANKS, D. C.

115 The above and foregoing has the following indorsement thereon, to-wit:—#41—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of V'b'g.—Filed Jan'y 9th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

Motion of Defendant to Withdraw Claim for Damages.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court for leave to withdraw, without prejudice, its claim for damages filed herein on the 3rd day of July, 1901, on account of the wrongful suing out of the injunction herein against the said defendant.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
For Motion.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Filed Jan. 9th, 1902. L. B. Moseley, clerk, C. D. Banks, D. C.

Order Allowing Withdrawal of Claim for Damages.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

This cause coming on this day to be heard on the motion of defendant for leave to with-draw without prejudice its claim for damages for the wrongful suing out of the injunction herein against the said defendant and the court having considered the matter; it is ordered and decreed that the said defendant be and it is hereby allowed to withdraw said demand for damages without prejudice and said demand is hereby dismissed without prejudice to defendant.

Ordered and decreed this the — day of January, 1902.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon to-wit:—# 41—Vicksburg Water Works Co. *vs.* Mayor and Al-
116 dermen of the City of Vicksburg—Order allowing withdrawal claim for damages.—Entered—Jan. 9th, 1902, M. B. # 1 at page 607.

Order Continuing in Force the Injunction on the Bond Heretofore Filed.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG, MISS.

Jan. Term, 1902

This cause came on to be heard on the motion of Vicksburg Water Works Company to continue in force the temporary restraining order, heretofore granted in this cause on the bond filed and approved.

The same being considered by the court—it is therefore ordered, adjudged and decreed by the court that the temporary restraining order heretofore granted in this cause be and the same is hereby continued in force on the bond filed and approved until Tuesday the 8th day of July, A. D. 1902 unless otherwise ordered by a decision of the Supreme Court of the United States had in said cause now pending before said court on a jurisdictional question.

Ordered this the 18th day of Jan., 1902.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Vicksburg Water Works Co. *vs.* The Board of Mayor and Aldermen of Vicksburg. Filed and entered on M. B. 1 p. 610 at 12.30 p. m. Jan. 18 1902. L. B. Moseley, clerk. By J. H. Short, D. C.

117 Mandate of the Supreme Court of the United States Reversing Decree & Remanding Cause to Circuit Court.

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the honorable judges of the circuit court of the United States for the southern district of Mississippi, Greeting:

Whereas lately in the circuit court of the United States for the southern district of Mississippi before you, or some of you, in a cause between The Vicksburg Water Works Company, complainant, and The Mayor and Aldermen of the City of Vicksburg, defendants, wherein the decree of the said circuit court, entered in said cause on the 3rd day of July, A. D. 1901, is in the following words, viz:

"This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause and the court now being advised in the premises and it appearing that there is no

Federal question involved in the controversy presented by the pleading it is therefore ordered, adjudged and decreed that said injunction be and the same is hereby dissolved and that the bill of the complainant be and the same is hereby dismissed, and that execution issue therefor for the cost in the case.

H. C. NILES, Judge."

as by the inspection of the transcript of record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears,

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said Supreme Court, on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs; and that the said complainant, The Vicksburg Water Works Company, recover against the said defendants one hundred and ninety-two dollars and fifteen cents for its costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the said circuit court to take proceedings therein according to law.

April 7, 1902.

118 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of May, in the year of our Lord one thousand nine hundred and two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of Complainant.

Clerk	$87.15
Printing record	85.00
Attorney	20.00
	$192.15

The above and foregoing has the following indorsement thereon to-wit:—Supreme Court of the United States. No. 392. October term, 1901.—The Vicksburg Water Works Company *vs.* The Mayor and Aldermen of the City of Vicksburg. Mandate. Filed and ent. May 12th, 1902, L. B. Moseley, clerk, J. H. Short, D. C.

Motion to Restrain Defendant from Using Under-ground Gutter for Sewerage Purposes.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

Petitioner Vicksburg Water Works Co. moves the court for an injunction restraining the defendant Mayor and Aldermen in this case, from permitting, allowing or authorizing the inhabitants or any one from connecting with or using the under ground gutter on Washington street in Vicksburg for sewerage purposes for reasons shown in the motion as well as set out in the original bill.

S. S. HUDSON &
119 SMITH, HIRSH & LANDAU,
For Motion.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg.—Motion—Filed Oct. 20th 1902 and entered Law motion Docket # 1 *oage* 13. L. B. Moseley, clerk. J. H. Short, D. C.

Order Allowing Time to Take Testimony and Appointing a Commissioner to Take Same.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, July Adjourned Term, 24th Day of October, 1902.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF CITY OF VICKSBURG.

This day this cause came on to be heard on motion of the Vicksburg Water Works Company asking for an order from this honorable court to take testimony on a motion asking for an injunction restraining the defendant Mayor and Aldermen of the City of Vicksburg from using authorizing or permitting the inhabitants or other persons of Vicksburg from connecting with or depositing sewerage matter or using the same for sewerage purposes in what is known as an undergraound gutter on Washington street, Vicksburg, Mississippi and described in the original bill in this cause: and the same having been considered by the court, it is ordered, adjudged and decreed that the Vicksburg Water Works Company and defendant be allowed thirty days from this date on which to take testimony on the said motion.

And it is further ordered, adjudged and decreed that Joseph H.

Short, is hereby appointed commissioner of this court to take testimony on said motion.

Ordered, adjudged and decreed this 24th day of October, A. D. 1902.

H. C. NILES, Judge.

Entered on Minute Book # 1 at page 629 of the official records of this office.

120 Motion by Complainant for Decree *pro Confesso*.

VICKSBURG WATER WORKS CO.
vs.
MAYOR AND ALDERMEN.

Now comes the complainant Vicksburg Water Works Co. in the above styled cause and moves the court for a decree *pro confesso* in this cause because the defendant has failed to file any answer herein.

S. S. HUDSON,
SMITH, HIRSH & LANDAU,
For Motion.

The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Alderman. Motion. Filed Oct. 23rd, 1902. L. B. Moseley, clerk. J. H. Short, D. C.

Order Extending Time within which to Take Testimony.

VICKSBURG WATER WORKS CO.
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

This cause came on to be heard on the motion in open court to take testimony in this case.

It is therefore ordered, adjudged and decreed that either party shall have until the first Monday in January, 1903, within which to take testimony in this case upon the issues of fact.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Equity. V'burg Water Works Co. *vs.* Mayor & Aldermen.—Order. Filed and entered M. B. 1 p. 630 Oct. 24th, 1902. L. B. Moseley, clerk, J. H. Short, D. C.

121 THE UNITED STATES OF AMERICA, }
Western Division of the Southern Dis }
trict of Mississippi. }

The President of the United States of America to the marshal of said district, Greeting:

We command you that you summon M. O. Crumpler, A. L. Pierce, J. B. Smith & Wm. Stanton, that all excuses ceasing and all business laid aside, they do appear before me, a special commissioner — the circuit court of the United States, for the western division of the southern district of Mississippi, at Vicksburg, Miss., November 20th, 1902, there and then to testify according to their knowledge, in a cause pending before said court, in which The Vicksburg Water Works Company — plaintiff, and The Mayor and Aldermen of the City of Vicksburg — defendant, on the part of said Vicksburg Water Works Company. And this they shall in nowise omit, under penalty of one hundred dollars, and the consequences of such omission.

Witness the Hon. M. W. Fuller Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Vicksburg this the 8th day of November A. D. 1902.

J. H. SHORT,
Special Commissioner.

The foregoing has the following marshal's return thereon.

Received this writ on Nov. 8th, 1902, and on Nov. 8th 1902 served the same in Vicksburg, on M. O. Crumpler, A. L. Pierce, J. B. Smith and Wm. Stanton, by handing each of them a true copy of this writ.

EDGAR S. WILSON,
U. S. Marshal,
By E. C. YELLOWLEY, Deputy.

Fees $2.00.

The above and foregoing has the following indorsement thereon to-wit:—No. —— U. S. circuit court, western division of the southern district of Mississippi. Nov. 20th 1902. Vicksburg Water Works Co. *vs.* The Mayor and Aldermen of City of Vicksburg. Spa. Witnesses.—M. O. Crumpler, A. L. Pierce, J. B. Smith and Wm. Stanton. Returned and filed this 10th day of Nov. 1902. L. B. Moseley, clerk. J. H. Short, D. C. Attorney —— ——.

Order Extending Time within which to Take Testimony.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

122 VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

Order.

This cause coming on to be heard on motion of the complainant for further time within which to take testimony in this case, and the same having been considered by the court, it is therefore ordered, adjudged and decreed, that the complainant Vicksburg Water Works Company, and defendant, Mayor and Aldermen, be, and they are hereby given until the 1st day of January, 1904, within which to take testimony in this case.

Ordered, adjudged & decreed, this 18th day of June, 1903.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Equity.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Order—Filed June 19th, 1903, and entered on M. B. 2 at page 22. L. B. Moseley, clerk. J. H. Short, D. C.

Petition Praying that the City Water Works & Light Company be Substituted as Complainant.

Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG, MISSISSIPPI. } In Equity.

Your petitioner The City Water Works & Light Company, a corporation organized under the laws of the State of South Dakota, would respectfully state that on the first day of December, 1903, it purchased by warranty deed all of the property real, and personal, choses in action and in possession, all rights claims and demands, and all evidences of debt, belonging or in any wise appertaining to the aforesaid Vicksburg Water Works Company, and particularly all its rights in the aforesaid suit; and the deed thereto is recorded in Deed Book 101, page 414, of the records of deeds of Warren county, Mississippi, and a copy of it is herewith filed and made Exhibit "A" to this petition. And your petitioner is now in possession of all of the aforesaid property and is operating the same.

123 The premises considered your petitioner asks that it be substituted as complainant in the aforesaid suit and that it may succeed to all the rights and remedies to which the said Vicksburg Water Works Company is entitled in the said suit, and the rights of the said Vicksburg Water Works Company in all the decrees, orders depositions pleadings etc., had in said suit or which may hereafter be had; and that it may be permitted to prosecute the said suit in all respects as though it were the Vicksburg Water Works Company; and as in duty bound your petitioner will ever pray, etc.

CITY WATER WORKS & LIGHT CO.,
By HUDSON & FOX &
SMITH, HIRSH & LANDAU, Attorneys.

EXHIBIT "A."

In consideration of ten dollars cash in hand paid and for other good and lawful considerations, the Vicksburg Water Works Company, of Vicksburg, Warren county, Mississippi, hereby convey and warrant unto the City Water Works & Light Company the following described real and personal property, subject, however, to all bonded indebtedness now existing against the said property, belonging to the Vicksburg Water Works Company, situate, lying and being in Vicksburg, and Warren county, Mississippi, to-wit:—

All square twenty-*thr*ee (23) and lots one hundred and twenty-one (121), one hundred and twenty-two (122), one hundred and twenty-three (123), and one hundred and twenty-four (124) in square twenty-seven (27) and a strip of land sixty (60) feet wide lying between said squares, as laid down on the Vicksburg Wharf & Land Company survey as recorded on page three sixty-two (362) of *Block* No. Sixty-two (62) of the records of deeds of said county and also a strip of land —(60) feet wide off of the south end of lot five hundred and eight (508) in square twenty-four (24) and a strip sixty feet wide off of the south end of lots five hundred and nine (509) and five hundred and ten (510) in square twenty-five (25) of the said survey, cut off by lines parallel with the south lines of said squares; also that certain parcel of land in said survey bounded and described as follows, to-wit: Beginning at the southwest corner of lot one hundred and twenty-one (121) in said square twenty seven (27) and running thence north thirty-one (31) degrees and thirty-six (36) minutes east along the west line of said squares twenty seven (27) and
124 twenty three (23), five hundred and eighty nine and nine tenths (589.9) feet to the northwest corner of said square twenty-three (23) thence north sixty-nine degrees and forty-four (44) minutes west fifty and nine tenths (50.9) feet to the center of the track of the Louisvill-, New Orleans and Texas Railway Company, thence south thirty one (31) degrees and thirty six (36) minutes west down the center of said track two hundred and ninety one and twenty two one-hundredths (291.22) feet, thence north sixty nine

(69) degrees and forty four (44) minutes west fifty and nine one hundredths (50.09) feet to the east line of the said square twenty four (24), thence south thirty one (31) degrees and thirty six (36) minutes. West along said line sixty-one and eighteen one hundredths (61.18) feet to the south east corner of said square twenty four (24), thence south sixty nine (69) degrees and forty four (44) minutes east fifty and nine one tenths (50.9) feet to the center of said track, thence south thirty one (31) degrees and thirty six (36) minutes west along the center of said track two hundred and thirty seven and four tenths (237.4), and thence south sixty nine (69) degress and forty-four (44) minutes east fifty and nine tenths (50.9) feet to the place of beginning. Also a right of way and *rp*ivilege of constructing a tunnel under the track and property of the Louisville, New Orleans and Texas Railway Company, which track and property is now located over and through the last described parcel of land, which right of way was granted to the Vicksburg Water Supply Company by Samuel R. Bullock *et al.*, by deed of November twelfth, eighteen hundred and eighty eight, recorded in Deed Book No. Sixty-five (65) page*d* three hundred and ninety five (395) and three hundred and ninety-six (396) of the records of deeds of Warren county, Mississippi.

Also parts of lots thirty nine (39) and forty (40) in square three (3) according to the p-an of James R. Searles' re-survey of Castle Hill, recorded in Deed Book Fifty-nine (59) page three hundred and thirty (330) of the records of deeds of said county, and more particularly described as follows: Commencing at the southwest corner of lot forty (40) of the said square as established by the said Searles re-survey; thence along the south line of lot forty (40) two hundred and eighty (280) feet to an iron post, thence north twenty nine (29) degrees and fifteen (15) minutes west (true bearing) one hundred and forty one and one half (141½) feet to an iron post on the northern line of lot thirty nine, thence along said north line one hun-
125 dred and eighty (180) feet to its intersection with Walnut street to an iron post, thence along the front of said lots thirty nine (39) and f*i*rty (40) on the east side of Walnut street one hundred (100) feet to an iron post to the point of beginning, together with all water works, buildings, pump houses, stand pipe, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situate in the city of Vicksburg, county of Warren and State of Mississippi, and together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in any way appertaining and the reversion and reversions, remainder and remainders, tolls, rents, issues, profits and income accruing thefefrom and also all land tenements, hereditaments and all other property whatsoever real and personal now owned or which may hereafter be acquired by said water company.

Also all and singular the corporate franchises, privileges, rights and liberties, which the Vicksburg Water Works Company now hath and can exercise or shall hereafter acquire and possess.

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the water company of, in and to the property above described or which may hereafter be acquired, and each and every part and parcel thereof with the appurtenances.

Also that certain written contract made by and between the City of Vicksburg, Miss., and Samuel R. Bullock & Company, dated on the eighteenth day of November, eighteen hundred and eighty-six, for the rental of water hydrants for the use of the city and the supply of the inhabitants thereof with water for a period of thirty years.

In witness whereof the Vicksburg Water Works Company has caused these presents to be signed by its vice-president and its corporate seal attested by its secretary to — hereunto affixed this thirty first day of July, A. D. 1903.

VICKSBURG WATER WORKS COMPANY,
By ALBERT N. EDWARDS,
Its Vice President.

[SEAL.]

Attest:
M. O. CRUMPLER, Secretary.

STATE OF MISSOURI, }
City of St. Louis, } ss:

This day personally appeared before the undersigned a notary public in and for the city of St. Louis State of Missouri the within named Albert N. Edwards, vice president of the Vicksburg Water Works Company, who acknowledged that he signed, caused
126 the corporate seal of the said company to be affixed, and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.

Given under my hand and official seal this 31st day of July, A. D. 1903.

P. L. GURNEY,
Notary Public. [SEAL.]

My term expires December 19th, 1906.

STATE OF MISSISSIPPI, }
Warren County. }

This day before me, the undersigned a notary public in and for the city of Vicksburg, Mississippi, personally appeared M. O. Crumpler, secretary of the Vicksburg Water Works Company, who acknowledged that he signed, affixed the corporate seal of the said company and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.

Given under my hand and official seal this 3rd of August, A. D. 1903.

WM. WAGGONER,
Notary Public. [SEAL.]

My commission expires March 7th, 1904.

STATE OF MISSISSIPPI, }
Warren County, } *ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 1st day of December, 1903, at 10.05 o'clock a. m. and duly recorded in Deed Boook No. 101, page 414, *et seq.*

Witness my hand and seal of said court this 1st day of December, 1903.

J. D. LAUGHLIN, Clerk,
By J. E. GORMAN, D. C. [SEAL.]

STATE OF MISSISSIPPI, }
Warren County, } *ss:*

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing three pages and twenty-six lines contain a true and correct copy of the deed from the Vicksburg Water Works Company to the City Water Works and Light Company as the same appears on file and of record in my said office.

Witness my hand and seal of said court this 2nd day of May, 1904.

J. D. LAUGHLIN, Clerk,
By J. E. GORMAN, D. C. [SEAL.]

127 The above and foregoing has the following indorsement thereon, to-wit:—Equity *14*.—Vicksburg Water Works Co. *vs.* Mayor and Board of Aldermen of City of Vicksburg, Miss. Petition.—Filed December, 2nd, 1903. L. B. Moseley, clerk. J. H. Short, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

Motion by Complainant to Suppress Cross-interrogatories.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY }
v.
MAYOR & ALDERMEN OF VICKSBURG. }

Now comes the complainant, The Vicksburg Water Works Company, by its attorneys, and moves the court to suppress the cross interrrogatories in this cause propounded to J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, T. I. Flan-

agan, C. Linstrom, J. Voewinkle, numbered as follows, to-wit: Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 35 and 36; those propounded to T. C. Thomas, as follows, to-wit; 14, *51*, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; those propounded to H. J. Trowbridge as follows, to-wit:—1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 to forty one inclusive; those propounded to H. H. Harralson, to-wit: 34 and 35; because,

1st. These depositions are taken by written interrogatories addressed to the above witnesses, and the questions asked by defendant are not in rebuttal of, or connected with, any matter brought in direct examination, and complainant would have no opportunity of a re-direct examination of the said witnesses regarding such matters.

Second. Said questions in some instances are irrelevant and incompetent, containing new matter entirely which was not touched upon in direct examination and in other instances the city is estopped from asking such questions.

3rd. And for other reasons to be shown on argument of this motion.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Att'ys for Compl't.

The above and foregoing has the following indorsement thereon, towit:—41 Equity. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg.—Motion to suppress
128 cross-interrogatories.—Filed Jan'y 8th, 1904. Ent. Eq. O. B. page 36. L. B. Mosely, clerk, J. H. Short, D. C. S. S. Hudson and Fox, attorneys at law, Vicksburg, Miss.

Motion to Modify Injunction.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant and moves the court for a modification of the injunction granted in the above styled cause against the said defendants so as to make the same definite and certain and for ground of this motion shows: that said injunction is vague and uncertain.

That defendant is in doubt as, to the scope of said injunction and for that reason is greatly hampered and embarrassed in dealing with said complainant lest it be found in contempt of this court.

Defendant further shows: that the real and only serious contest arising from the pleadings in this cause is as to whether this com-

plainant is liable under an alleged contract between it and the said complainant for rentals of fire hydrants owned by said complainant and now and heretofore being used by the said defendant.

Defendant is advised and so states that the injunction ought in equity to be limited in its scope and effect to the question of the payment of said rentals, and therefore now moves the court to so modify the same, but in any event to modify the terms of said injunction so as to advise this defendant particularly what act or acts it must refrain from doing with reference to said complainant in order that it may avoid being in contempt of court and whether or not this defendant will be considered as violating the said injunction if it should build and operate a water works system of its own independent of the one now being operated by complainant.

W. J. VOLLER,
MAGRUDER, BRYSON & DABNEY,
Solicitors for Defen't.

The above and foregoing has the following indorsement thereon to-wit: 41 Equity.—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg—Motion to modify injunction,—Filed Jan'y 8th, 1904. L. B. Moseley, clerk, J. H. Short, D. C. And Ent L. M. D. 1 p. 3.

129 Petition to Open Depositions.

Circuit Court of the United States, Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Now comes the complainant and the defendant in this cause by their attorneys and moves the court to open the depositions of A. L. Metz, R. E. Milligan R. W. Jones and —— —— taken in this cause and now sealed and in the hands of the clerk of the said court having been filed this day.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
For Complainant.
MAGRUDER, BRYSON & DABNEY.

O. K.

The above and foregoing has the following indorsement thereon to-wit:—41 Equity.—Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Petition to open depositions—Filed Jan'y 9th 1904, L. B. Moseley, clerk. J. H. Short, D. C.

Order to Open Depositions.

Circuit Court of the United States, Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause having come on to be heard on motion of complainant and of defendant to open the depositions of A. L. Metz, R. E. Milligan, R. W. Jones and —— —— this day filed herein, and it having appeared that there was no objection to the said motion, both complainant — having joined therein; now, therefore it is hereby ordered and decreed that the said depositions have their seals broken and that they be opened. Ordered and decreed this 9th day of January, A. D. 1904.

H. C. NILES, Judge.

130 The above and foregoing has the following indorsement thereon, to wit:—41 Eq. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Order to open depositions.—Filed January 9th, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Motion to Hear Cause at Jackson, May, 1904, Term Next.

In the Circuit Court of the United States, Western Division of the Southern District of Mississippi, January Term, 1904.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the circuit court of the United States in and for the southern district of Mississippi, western division thereof:

Now comes the defendant and complainant by their attorneys respectively and move the court to set the above entitled cause for trial at the next May term, 1904 of the said court to be held at Jackson, Miss., on the 2nd day of the said month; and to allow both sides until the first day of March, 1904, within which to take testimony in this case.

HUDSON & FOX,
SMITH, HIRSH & LANDAU, Att'ys.
W. J. VOLLER &
BRYSON & DABNEY, Sols. for Def't.

The above and foregoing has the following indorsement thereon, to-wit:—41 Equity. Vicksburg Water — Co. *vs.* Mayor and Aldermenof the City of Vicksburg.—Motion to hear at May Jackson term.—Filed and ent. L. M. B. Jan'y 12th, 1904. J. H. Short, D. C.

Order Setting Cause Down for Trial at the May Term, 1904, at Jackson.

Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause came on to — heard upon motion of defendant and complainant by their attorneys to set the above entitled cause for hearing at the next May term, 1904, of this court, to be held at Jackson, Mississippi, on the first Monday of the said
131 month, and to allow both parties until the first day of March 1904, in which to take testimony in the said cause; and by consent of both parties thereto, it is ordered and decreed that the said cause be submitted for final hearing in vacation and that the same be set for trial by this court on the first day of said May term, 1904, of this court at Jackson, Mississippi on the 2nd day of said month; and it is further ordered and decreed that both parties to the said cause be allowed until the first day of March, 1904, in which to take testimony therein.

Ordered and decreed this 12th day of January, A. D. 1904.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon to-wit:—41. Equity.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of City of Vicksburg.—Order to hear at Jackson May term.—Filed and ent. M. B. 2 p. 47. Jan'y 12, 1904. L. B. Moseley, clerk.

Motion of City Water Works & Light Company that Court Grant Motion of Substitution Heretofore Made.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the City Water Works & Light Company, by its attorneys and moves the court to grant its petition filed on the 2nd day

of December, 1903, in this cause, requesting that it be substituted in the name and place and stead of The Vicksburg Water Works Company, the present complainant in this cause, and that it adopt all the pleadings, orders, proofs, decrees, etc., heretofore had and made in this cause, or that may hereafter be made, and that the same be as valid and binding on it and on defendant as if it had been the original complainant.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Att'ys for Petitioner & Complainant.

The above and foregoing has the following indorsement thereon, to-wit: No. 41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of Vicksburg. Motion — substitution.—Filed May 2nd, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

132 Complainant's Consent to the Substitution of City Water Works & Light Company as Complainant.

CITY WATER WORKS & LIGHT COMPANY
vs.
MAYOR AND ALDERMEN OF VICKSBURG.

We consent to the filing of the bill of the City Water Works & Light Company and that the relief prayed for in the said bill may be granted.

VICKSBURG WATER WORKS COMPANY,
By HUDSON & FOX &
SMITH, HIRSH & LANDAU, Att'ys.

The above and foregoing has the following indorsement thereon to-wit:—City Water Works & Light Company *vs.* Mayor & Aldermen City of Vicksburg.—Filed May 5th, 1904. L. B. Moseley, clerk.

Answer of Defendant to City Water Works & Light Company.

Circuit — of the United States, Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } #41. Chancery.

Now comes the defendant, The Mayor and Aldermen of the City of Vicksburg, and for answer to the petition filed herein on December 2, 1903, by the City Water Works & Light Company or to so much and such parts thereof as defendant is advised it is necessary or material for it to answer, answering says:

That it denies that the City Water Works and Light Company, a co-poration under the laws of the State of South Dakota, purchased by deed or otherwise, that it now owns the property, real and personal, or any part thereof of The Vicksburg Water Works Company, complainant herein, or that the said City Water Works & Light Company purchased or now owns the choses in action and in possession or the rights, claims and demands or all the evidences of debt or in any wise appertaining to the said complainant, The Vicksburg Water Works Company, as alleged in said petition; and defendant further denies that the said City Water Works & Light Company, has *nay* interest in the subject matter in said suit or that it
133 should be admitted as a party complainant in this suit.

W. J. VOLLER &
BRYSON & DABNEY &
CATCHINGS & CATCHINGS,
For Defendant.

The above and foregoing has the following indorsement thereon to-wit:—No. 41 Chancery. Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg. Answer of defendant to petition of City Water Works & Light Co. asking to be admitted as a party defendant.—Filed May 5th, 1904. L. B. Mosely, clerk.

Original Bill in the Nature of & Supplemental Bill.

In the Circuit Court of the United States in and for the Western Division of the Southern District of the State of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the honorable judge of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complaining your orator, City Water Works & Light Company, a corporation duly organized and existing under and by virtue of the laws of the State of South Dakota, and a citizen of said State, brings this its original bill of complaint in the nature of a supplemental bill against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

And thereupon your orator complains and says:

That on the 3rd day of April, 1901, the Vicksburg Water Works Company, a corporation organized and existing under and by virtue of the laws of the State of Mississippi, having its principal place of business in Vicksburg, filed its bill of complaint with exhibits in this honorable court against the said Mayor & Aldermen of the City of Vicksburg, the said bill of complaint and exhibits being in words and figures as follows, to-wit:

134 Copy of Original Bill.

In the Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Defendant.

To the honorable the judges of the circuit court of the United States in and for the western division of the southern district of Mississippi:

Humbly complainang, your orator, The Vicksburg, Water Works Company, a corporation duly organized and existing under the laws of Mississippi, and a citizen of said State, anf having its principal place of business in Vicksburg therein, brings this its bill of complaint against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation organized and existing under the laws of Mississippi, and located in Warren county in said State.

1st. And thereupon your orator, by the undersigned, its solicitors in this behalf, complains and says that, it and said defendant are organized as corporations as aforesaid and that on the 18th day of March 1886, the said city of Vicksburg, caused its charter to be amended by the legislature of the State of Mississippi, in words and figures as follows, to-wit: "to provide for the erection and maintenance of a system of water works to supply said city with water and to that end to contract with a party or parties who shall build and operate water works," whereby said city was empowered to provide and contract for a system of water works. Which said act was approved on the 18th day of March, 1886, and is set out in full in the Acts of 1886 of the Legislature of the State of Mississippi, page 695, reference to which is hereby made.

2nd. Your orator further shows that on the 19th day of November, 1886, the said city of Vicksburg received competitive bids for the best terms and conditions for the city and for the franchise rights, etc., S. R. Bullock and Company and other bidders submitting bids; and said bids or offers were referred to the mayor and aldermen of the city of Vicksburg, who thereupon made and investigation of the propositions offered by the respective competitive bidders, and according to the minutes of its proceedings on — day of —— 1886, accepted the proposition of S. R. Bullock
135 & Company, their associates, successors and assigns, as shown per Minute Book — of the proceedings of the boars of mayor and aldermen. A copy of which minutes is hereto filed and made a part hereof, and marked Exhibit "A," to this bill. And on the — day of —— 188–, the mayor and aldermen of the city of Vicksburg,

pursuant to the said act of the legislature of Mississippi, duly passed and adopted and ordinance for the construction and maintenance of a system of water works, and thereby entered into a contract with said Bullock & Company therefor, a copy of which said ordinance and contract entered into between Bullock & Company, their associates, successors and assigns and defendant is hereto attached and marked Exhibit "B" and made a part hereof.

3rd. Your orator further shows that in accordance with the said contract and ordinance and as provided therein, S. R. Bullock & Company were empowered to organize or create a water works company, and to sell or assign *sell* contract and ordinance to any water works company who would supply said city and its inhabitants in accordance with the terms and provisions of said contract and accept the terms and provisions thereof.

4th. Your orator further shows that said Bullock & Company on the — day of —— 1887, chartered and organized under the laws of Mississippi, the Vicksburg Water Supply Company, a corporation, a copy of said charter is hereto attached and marked Exhibit "C" and made a part hereof. And on the first day of March, 1887, said Bullock assigned and sold said contract to the Vicksburg Water Supply Company, now and at all times a going concern, and doing business in Vicksburg, Warren county, Mississippi. A copy of said assignment is herewith filed and marked Exhibit "D" and made a part hereof. And on the — day of —— in accordance with the terms and provisions of said contract and ordinance the said supply company being the assignee and *bona fide* owner of the same, and as required by the agreement therein contained, gave defendant notice, accepting the terms and conditions of said ordinance and contract, which notice is duly recorded on page — of the Minute Book, numbered — of said defendant, a copy of which notice is hereto filed and marked Exhibit "E" and made a part hereof. Said notice and acceptance of said ordinance was received and an entry thereof was made in its records, a copy of which entry is hereto attached and marked Exhibit "F" and made a part hereof.

136 5th. Your orator further shows that Bullock & Company proceeded to build and construct said water plant; as per specifications in said ordinance, and did build and complete said water works plant as specified in said ordinance, on or about the — day of —— 188–. And after inspection of said water works plant by defendant, the city, on the — day of —— 188–, the water works plant was accepted by said defendant the city, as having been completed in every respect, and having fully complied with all the provisions of said ordinance and contract in every respect.

6th. Your orator further shows that since the completion and acceptance of said water works, which is a period of about fourteen years, there has never been any complaint of any kind or character whatsoever, by word or resolution by the defendant, the city, or otherwise, that the water company had in any manner forfeited or violated the ordinance or contract with the defendant, the city; on

the contrary, said defendant, the city, understood and knew that said water company was so faithful in and with *the* respect to execution of its part of the ordinance that said defendant, the city, without question, issued and paid the said water company semi-annually, the price and sum of the rental stipulated in said ordinance up to the time the city fully decided it wanted a water works of its own, which was on or about July —, 1900.

7th. Your orator further shows that heretofore on the — day of March, 1887, said supply company duly made, executed and delivered a deed of trust conveying all its franchises, ordinances and contracts, together with all other property of whatsoever kind or nature, then or thereafter acquired, to secure the payment of its issue, $250.000 of first mortgage bonds; and said deed of trust was thereupon duly recorded in said Warren county; and a copy -hereof is hereto attached marked Exhibit "X" and made a part hereof.

8th. And therefore, default having been made in the payment of interest on said bonds, the same was foreel-sed on the 8th day of August, 1900, and all the said franchises, ordinances, contracts and property conveyed in said deed were sold, pursuant to the terms of said deed of trust, to the said Vicksburg Water Works Company, which is evidenced by deed made and executed by trustee, recorded in Book — page — of the records of deeds of Warren county, Mississippi. The said Vicksburg Water Works Company is a corporation duly, organized under the laws of Mississippi, and doing
137 business in said city of Vicksburg, and the owner of said water works property and operating the same.

9th. Your orator further shows that on the 18th day of October, 1900, the said Vicksburg Water Supply Company executed a quit claim deed to the said Vicksburg Water Works Company, conveying all rights, titles and interest it might have or hereafter acquire in said water works property, franchises, ordinances and contracts; a copy of which deed is hereto attached and marked Exhibit "G" and made a part hereof.

10th. And in pursuance of the purchase by said Vicksburg Water Works Company of the said property, ordinances, franchises and contracts, the said Vicksburg Water Works Company gave the said city notice in writing of said purchase and assignment, and filed with said city ots written acceptance of the terms and provisions of said ordinance; a copy of which notice and acceptance is hereto attached and marked Exhibit "H" and made a part hereof. And at the same time, said company filed with and furnished to said city, documentary evidence of its title and ownership of said franchises, ordinances, contracts and property.

11th. Your orator further shows that the said city of Vicksburg has since the completion and acceptance of the said water works as aforesaid, continuously received and used the water furnished by said water works and paid for the same during the period of about fourteen years as aforesaid without question or complaint; and said water has at all times been and is noe good and wholesome for public

and private use and an adequate supply for the needs of said city and its inhabitants; that said water so furnished from the time said city first received and accepted the same up to the present date is, and has at all times been, the same character and supply of water as when first received and accepted by said city by said S. R. Bullock & Company; the said Vicksburg Water Supply Company and the said Vicksburg Water Works Company; and the pressure maintained has at all times been, and is now greater than required by said ordinance and contract.

12th. And there has never been any complaint during said period of about fourteen years as to the character or quality of the water, nor as to the pressure nor as to any other matter from the said city nor any official or other notice that said water works company was not complying in every respect in accordance with said ordinance. But after said city desired to own its own water works and it was ascertained by said city that your orator, The Vicksburg
138 Water Works Company was the owner of said first mortgage bonds, and that by virtue of the sale under the said deed of trust it would become the owner of the said water works on the 8th day of August, 1900, said city without any notice to said water works company that said city claimed said company was not complying with the terms and provisions of said ordinance and contract arbitrarily, unjustly and illegally proceeded, as hereinafter set forth, to pass and adopt an ordinance and resolution, assuming to abrogate and take away the franchises and contract rights of your orator.

13th. Your orator further shows that the said city and its officers confederating and conspiring to injure and destroy the credit of the said Vicksburg Water Works Company and to destroy the value of its property assumed to abrogate and take away the franchises and contract rights of said company while denying its (said city's) liability to pay for the water used by it as provided in said contract and ordinance, and persistently and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price.

14th. Your orator further shows that the value of its property is in a large measure dependent upon its franchises and its contracts to supply said city with water, and that the value thereof is seriously impaired by the unjust and unlawful action of said city in assuming to abrogate and take away its franchises and contract rights as aforesaid.

15th. Your orator further shows that the said unlawful, unjust and illegal acts of said city and its officers are bein- done partly pursuant to an act of the legislature of Mississippi enacted on the 9th day of March, 1900, entitled "An act to authorize the mayor and board of aldermen of the city of Vicksburg, to issue bonds to the amount of $375.000, to purchase or construct, equip and maintain a water works system; construct and establish a sewerage system; to purchase ground for, ere-t and equip a city hall; construct the

necessary buildings for a hospital medical college and for other purposes." Said act *id* contained in Acts of 1900, page 180, reference to which is hereby made, whereby said legislature assumed to annul and abrogate the aforesaid ordinance and contract said city entered into with said Bullock & Company and their assigns, in this that by reason of said ordinance and contract said
139 city has no right within the period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company, or their assigns, notwithstanding which, said act authorizes and permits said city to construct and maintain water works for said purpose, if unable to buy the water works at the arbitrary and inadequate price fixed by said legislative act, and in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the — day of —— 1900, at which it was voted by a majority of the votes cast at said election, that said city should issue its bonds in the sum of $150,000. to buy or construct water works for said city, all of which acts and doings on the part of said city and the legislature of Mississippi, impaired the credit of said Vicksburg Water Works Company and depreciated the value of its property, and tend to disable it from carrying on its business, and to coerce it to sell its property for such arbitrary and inadequate price and cast a cloud upon its title, franchises and rights; and said act, or ordinance and resolution and each of them are in contravention of the Constitution of the United States, in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns.

16th. Your orator further shows, as hereinbefore referred to, that on the 7th day of November, 1900, said city passed a resolution and ordinance assuming to abrogate and take away the franchises and contract rights of the said Vicksburg Water Works Company, a copy of which is hereto attached, marked Exhibit "I" and made a part hereof.

17th. Your orator further shows that if such act of March, 1900, and said resolution and ordinance adopted on said 7th day of November, 1900, as aforesaid, are permitted to stand, they will take away one of the most valuable assets of said Vicksburg Water Works Company, which will so materially impair its value as to wreck and ruin said water works in the hands of your orator, The Vicksburg Water Works Company.

18th. Your orator further shows that heretofore during the election to be held on the question of bonding the city for water works, sewerage, etc., as aforesaid, it was deemed admissible to have appointed an advisory board in conjunction with said mayor and aldermen of the city of Vicksburg, as to the wisdom of the expenditure of said bonds; that said advisory board and mayor and
140 aldermen passed a resolution and gave a copy of same to your orator, requesting a reply. A copy of said resolution is hereto attached, marked Exhibit "J" and made a part hereof.

19th. Your orator further avers that the Vicksburg Water Works Company took possession of said water works on August 15th, 1900, and that the city election was held on December 6th, 1900, for city officers, and during the period between August 15th, and December 6th, 1900, many of the munici-al office holders and seekers from the mayor of said city down dragged the water works into politics without the consent and wishes of your orator, and openly stated and published in the newspapers in the city, that if elected they would bring suit to cancel the contract with the -ater company, and charged that your orator had taken snap judgment on the city in buying said water works; copies of said publications are hereto attached marked Exhibits — an*f* made a part hereof. All of which statements and publications were harmful and injurious to your orator, greatly hampering it in carrying on its business.

20th. Your orator alleges the fact to be that the incorporators of said Vicksburg Water Works Company commec*n*ed negotiations to buy the water plant in the fall of the year, 1899, and on January 5th, 1900, made a proposition in writing to buy the plant, which date was prior to the introduction of said act in the legislature, authorizing the city to buy or construct a water works system, and your orator never knew that the city had any desire whatever to own a water works p*a*l*n*t of her own at the time of such negotiations.

21st. Your orator further shows that during said municipal election, rumors of damaging effect and that were utterly false began to travel the streets of defendant, the city, and were poured into the uninformed public ear, and met great favor with the newspapers of the city having a wide and influential circulation in said city, and through their columns the papers would themselves, and also by its citizens, some of whom were candidates for office, write inflammatory and untruthful articles about your orator, all of which has given birth to an unjust public disfavor and unrighteous pred*j*udice, which said rumors and articles have greatly injured your orator, and your orator is informed, believes and charges the fact to be that said rumors and articles were originated and circulated by officers, agents and confederates of said city, pursuant to said conspiracy and confederacy against your orator.

22nd. Your orator further shows that some time after the
141 Vicksburg Water Works Company had bought the water works plant, and after it was well known that the city wanted the water works, or one of her own, one of the leading citizens of Vicksburg, for himself and associates offered to buy the waterworks from your orator at a price exceeding $150,000, and your orator charges the fact to be that this same citizen is today one of the advisory board, and that he is acting in that capacity with said board in conjunction with the mayor and aldermen to coerce and force your orator to sell said water works at a price less than what he himself and associates offered to pay your orator.

23rd. Your orator further shows that suit was commenced by the

city of Vicksburg in the chancery court of Warren county, Mississippi, to have declared void, said ordinance or contract your orator has with the city, at the instigation of said board of mayor and aldermen and said advisory board, and in about sixty days from the filing of said suit your orator received a communication from said associates of said leading citizen to know if your orator now cared to sell the water works. Whether — not said leading citizen and associates are confederating in conjunction with said mayor & aldermen in said suit, your orator is unable to state. A petition for the removal of said suit to this court was filed by complainant herein because it involved a Federal question and the same is now pending in this court upon motion to remand, a copy of the bill of complaint is hereto attached and marked Exhibit "Y" and made a part hereof.

24th. Your orator further shows that on the 29th day of Feb'y, 1890, the defendant caused to be passed an act of the legislature of the State of Mississippi, entitled "To provide means for the construction of a sewerage system in the city of Vicksburg and to issue bonds therefor," which act will be found on page 507 of the sheet acts of said body, reference to which is hereby made, and this act has never been repealed by any subsequent legislation of Mississippi.

25th. On the 9th day of March, at the instance of the defendant, the legislature of the State of Mississippi, passed an act as aforesaid, entitled "An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of $375,000. to purchase or construct, equip and maintain a water works system," etc., while said contract and ordinance entered into with said defendant, the city, was still in force, and the conditions thereof being performed by both parties without complaint from either. Your orator charges that said act of March, 1900, is unconstitutional for many reasons, which will be shown to the court on the hearing of this cause, meaning as follows to-wit:

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1st. Because it arbitrarily places the prices and value upon another's property, in which defendant has no interest.

2nd. Because the legislature of the State has by said act passed an *ex post facto* law impairing the obligations of a contract.

3rd. Because said act is in conflict with the act of 1890 page 507 providing for the construction of a sewerage system, because the acts of 1900 does not in accordance with section — of the constitution of Mississippi repeal said act of 1890.

4th. Because said act of 1900 is local in character, when the provisions contained therein could be provided for by the general law.

5th. Because it abuses the credit of the city if these bonds are permitted to be issued and sold.

26th. Your orator would respectfully represent that about 1870, the defendant constructed a large underground gutter of about five feet in diameter on Washington street of defendant and through the most populous part thereof for about one half mile for the purpose

of conducting away the surface water of said defendant into the Mississippi river, and which was used for that purpose solely until afterwards as aforesaid in 1887 as aforesaid, the Vicksburg Water Supply Company as aforesaid, built its pumping station and intake pipe on the Mississippi river below the defendant which arranges the pumping station of your orator with reference to the mouth of this gutter so as to locate it about two miles up said river above said station. Some time after the Vicksburg Water Supply Company was put in operation, the citizens and inhabitants of defendant along or near Washington street began to connect the water closets on their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent until it has been converted into a partial sewer for said street for said water closets of said residences stores and hotels, and if defendant permits a general connection with this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said con-
143 tract and ordinance with said city, and unless the use thereof is prohibited by defendant, your orator will be compelled to cut off and prevent the use of its water for such closet and sewer purposes by said residences, hotels and stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered.

27th. Your orator further charges that it has no adequate remedy at law for the damages which it has sustained by reason of the aforesaid conspiracy and unlawful acts of the defendant and others, and also that it has no remedy at law to enjoin and restrain a continuation by defend-nt of said unlawful actings and doings; and it charges that the continuance of said actings and doings will injure and damage your orator in the sum exceeding the amount of ten thousand dollars, and that the acts of defendant aforesaid have already damaged the complainant in its business in the sum exceeding said amount.

28. Your orator now especially shows that said ordinance or franchise Exhibit "B" provides that the defendant, the city shall pay to your orator semi annually to-wit; January 1st. and July 1st. of each year, the price or prices named in said ordinance for the fire hydrants as stipulated and set out therein.

29th. Your orator especially complaining shows that the defendant the city, is now refusing to pay your orator the amount due and payable on January 1st, 1901, and only offers to pay an inadequate amount or price and under specific conditions, that if accepted by your orator would commit your orator to a false position with reference to its contract with the city; that the defendant, the city, by this scheme is confederating, conspiring and endeavoring to coerce your orator to commit an act whereby the ordinance would be annulled, notwithstanding the fact that defendant has already collected from the tax payers of defendant, the full amount with which to pay this demand.

30. Your orator further shows that we have, and did offer and now offer to the defendant, the city, in writing assuring the city that the payment for said fire hydrants due on January 1st. 1901, as stipulated in said ordinance should in no wise prejudice said city in a suit or suits whatever pertaining to this matter; your orator agreed to do this, that in this way your orator would be able to maintain itself and continue to furnish water *fro* fire protection to said city, and that we were, and are now willing to do so, but your orator especially alleges that it cannot keep up the enormous ex-
144 penses and pay fixed charges and maintain itself, and continue to deliver water for fire protection etc., unless the defendant, the city pays for the water as received and used by it. A copy of the proposition made to water committee, city attorney and board of mayor & aldermen *id* hereto attached and marked Exhibit "K." and made a part hereof.

31. Your orator further shows that the water committee (after the bill was referred back to them. called a special meeting of the board of mayor & aldermen on Feb'y 7th, 1901 and made the following report, to-wit:

"To the honorable board of mayor & aldermen:

Report of the Committee of Water Works upon the Matter of the Accounts of the Vicksburg Water Works Company Referred to It.

GENTLEMEN: Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts presented by said company. On the first day of October, 1900, the board of mayor & aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers therefore in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just and therefore have proposed to said company that we will pay them from the 15th day of August, up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50.00 per hydrant, which we consider a most liberal rate; it being understood however that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises.

(Signed) D. A. CAMPBELL,
T. M. CAUGHLIN,
W. O. SMITH,
Committee."

32. Your orator would show that said board of mayor & aldermen received and adopted the water committee's report in words and figures as follows: "That the accounts be allowed on the basis and conditions of the committee's report." Your orator respectfully shows that said report of the water committee and the adoption of the same by the board of mayor & aldermen is so worded and
145 hedged about that if your orator should accept the payment as stipulated therein, it would acknowledge thereby or break the contract, in this, the defendant, the city, reserving to itself all the rights in words and figures as follows; "It being understood however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future, and after the termination of the pending suit, neither would this payments be deemed in any way the waiver of the rights of the city in the premises" But no rights are reserved to your orator, and therefore as before stated, if partial payment was accepted under the terms and conditions specified in said committee's report and mayor & aldermen's adoption, your orator would thereby be doing an act that could and would be construed the ending or breaking of the contract.

33. Your orator now shows that it cannot accept the proffered partial payment under the terms and conditions as specified in said water committee's report and mayor & aldermen's adoption, and that unless the defendant, the city, pays your orator, your orator will be unable to maintain itself and keep up the great expenses necessary to operate such a plant, discharge fixed charges as aforesaid, and while your orator is willing and anxious to furnish water for fire protection etc., and fully carry out said contract, and have offered so to do, and now offer so to do, but as before stated if defendant, the city, continues to refuse to pay for said water on a basis that each and all rights both for your orator and defendant, the city, may be equally and equitably reserved until this honorable court can decide the case on its merits, your orator will — unable to maintain itself and furnish water for fire protection etc.,

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable, and to the end that defendant may be required to answer, but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in competition with your orator's water works, and to the end *to the end* that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays;

146 I. That defendant may be compelled to answer the premises, (not under oath).

II. That the defendant may be enjoined, perpetually, from assum-

ing to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to destroy its credit and the value of its property and to coerce said complainant to sell its water works to defendant for an inadequate price, and that defendant may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, and that said act of the legislature of Mississippi, adopted on the 9th day of March, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

III. May it please your honors to grant unto your orator a writ of injunction issuing out of this honorable court, under the seal thereof, directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant, and from endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into, and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orator not only a writ of injunction, but furthermore a writ of *subpœna as respondendum* directed to the defendant, namely The Board of Mayor & Aldermen of the City of Vicksburg (corporation as aforesaid); and thereby to command them upon a day certain therein named, to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to
147 your honors may seem meet, to the end that your orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant, for all monies due it under said ordinance with 6% interest per annum from the date of their respective maturities until it is paid.

VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes, or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water and that defendant be compelled to pay your orator for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand, and as may be in conformity with equity and good conscience and in accord with the practice in this honorable court as a court of equity.

And your orator will ever pray etc.

VICKSBURG WATER WORKS COMPANY,
By S. S. HUDSON &
A. N. EDWARDS,
Its Solicitors.

STATE OF MISSISSIPPI,
Western Division of the Southern Judicial District } ss:
of Mississippi, City of Vicksburg.

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer and manager of Vicksburg Water Works Company at the city of Vicksburg, Mississippi, and that the matters and facts stated in the foregoing bill of complaint of the Vicksburg Water Works Company are true, except as to such charges as are therein stated to be upon such information and belief; and as to those he believes the said charges so made to be true; and further affiant sayeth not.

(Signed) M. O. CRUMPLER.

Sworn to and subscribed before me, the undersigned, this 13th day of February, 1901.

L. B. MOSELEY, Clerk.
C. D. BANKDS, D. C.

148 EXHIBIT "A."

CITY HALL, November 12th, 1886.

A special meeting of the board of mayor and aldermen to further consider the proposition of the water works company, and to receive and entertain other proposition looking to the erection of a system of water works in our city was held on the above date.

Present: John W. Powell, mayor.

Aldermen, Kuhn, Ehrman, Rice, Anderson, Walsh, Baum and Crayton.

On motion of Alderman Baum, it was resolved that if any company or companies desiring to erect a system of water works in our city had a proposition to submit, said company or companies be requested to present their proposition.

After considerable discussion on the part of Major L. W. Magruder attorney for, and Mr. H. A. Hungerford agent for Samuel R. Bullock & Company of New York, Mr. Smedes, A. B. Pittman and Capt. Butts representing the Vicksburg Water Works Company, and

Alderman Baum and other aldermen on the *apr*t of the board as to what would be the conditions — the proposition of Samuel R. Bullock & Company would be received; the Vicksburg Water Works Company and some members of the board claiming the right of said Vicksburg water works to submit another bid after the bid of Samuel R. Bullock had been received and opened, Major Magruder and Mr. Hungerford denying the right of said Vicksburg Water Works Company to submit another bid after the bid of Samuel R. Bullock & Company had been received.

On motion of Alderman Baum the resolution offered by him requesting any company or companies having bids to present for water works be requested to present them was reconsidered by the following vote:

Ayes.—Aldermen Kuhn, Ehrman, Rice and Baum.

Nays.—Walsh, Crayton and Anderson.

On motion it was resolved that the board invote bids for the construction of water works at its meeting on Monday night with the following vote:

Ayes.—Juhn, Ehrman, Rice, Anderson, Walsh & Baum.

149 Nay*es*.—Crayton.

JOHN W. POWELL, Mayor.

OFFICE OF BIRCHETT & GILLAND, Nov. 18th, 1886.

A special meeting of the board of mayor & aldermen to receive the report of the street committee on water works was held on the above date, pres*n*et, Honorable John W. Powell, mayor, Aldermen Kuhn, Rice, Anderson, Walsh, Demarchi, Baum and Crayton, absent, Alderman Ehrman.

The street committee through its chairman, Alderman Baum, reported that after having considered the propositions of the Vicksburg Water Works Company and Samuel R. Bullock & Company of New York, they arrived at the conclusion that the latter proposition was the better of the two, and after conferring with Mr. Hungerford, agent of the said Samuel R. Bullock & Company making certain changes and modifications in the original proposition as submitted by the said S. R. Bullock & Company on November 15th, 1886, submitted as their final report an ordinance, e*h*titled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" which was read the first time and under a suspension of the rules, was read the second and third time by its title, and adopted with the following vote.

Ayes.—Aldermen, Kuhn, Rice, Anderson Walsh, Demarchi and Baum.

Nays.—Alderman Crayton.

On motion it was resolved that the thanks of this board are due and hereby tendered to the street committee for the able manner — which they have settled the question of water works.

* * * * * * *

(Signed) JOHN W. POWELL, Mayor.

EXHIBIT "B."

An ordinance *tp* provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors, and assigns, for a supply of water for public use, and giving the said city of Vicksburg an option to purchase the said works.

150 & 151 *Be it ordained* by the mayor and aldermen of the city of Vicksburg.

SECTION 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock and Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended and within such other territor*ity* as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for the conducting and furnishing an adequate supply of good wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

The said Samuel R. Bullock & Company, their associates, successors and assigns shall exercise the greatest care and diligence in the use of the said streets, alleys, public squares and other public places and shall cause no unnecessary obstruction of or interruption to the public travel over or upon the same or any injury to or interference with any pipes, mains or sewers which may now be lawfully located beneath the surface thereof.

The said Samuel R. Bullock & Company, their successors, associates and assigns, shall take every precaution to provide against danger to property life and limb by reason of the exercise of the rights and privileges hereby granted, and shall cause all excavations and obstructions to be properly lighted and guarded at night and after the completion of the purpose for which the said streets, alleys, public *swaures* and other public places may be used they shall be re-

stored to their former condition as near as may be without unnecessary delay, and they shall at their own cost and expense relay their mains and pipes when made necessary by a change of grade in any street ordered by the board of mayor & aldermen of said city if there was no established grade for such street at the time said mains and pipes were laid. On failure to restore such streets, alleys,
152 public squares and other public places as aforesaid, the mayor *of* the aldermen of the city of Vicksburg may on reasonable notice to them by any city officer, cause the same to be restored and recover the costs and expenses thereof from the said Samuel R. Bullock & Company, their associates, successors and assigns in any court having jurisdiction of the amount.

The said Samueal R. Bullock & Company, their associates, successors and assigns hereby agree to hold the mayor & aldermen of the city of Vicksburg harmless from any liability which may result to it by reason of any violation of this section.

SECTION 2. The general plan of the said system of water works shall be as follows:

Mains.—The pipe system shall consist of not less than twelve (12) miles of mains of sizes varying from sixteen inches (16) to six (6) inches in diameter. The pipe used shall be of the best quality of cast iron pipe and each pipe shall be tested at its place of manufacture to a pressure of three hundred (300) pounds to the square inch. All pipe shall be coated with Dr. Angus Smith's preservative varnish and shall be laid and jointed by competent mechanics, and in the best possible manner.

The streets along which it and at what points said mains shall be laid shall be first designated by the board of mayor & aldermen of the city of Vicksburg.

Hydrants.—The hydrants shall be double nozzle fir- hydrants with nozzles fitted to connect with the hose couplings now in use by the fire department of said city of Vicksburg.

The board of mayor & aldermen of the city of Vicksburg shall within thirty days (3-) from the date of the final passage of this ordinance designate the points on the line of distributing mains at which the hydrants shall be erected.

Gates and valves.—All necessary gates and valves shall be provided and located at such points on the lines of mains as will enable certain district- to be cut off and isolated when repairs are needed without depriving other districts of their full supply.

Pumps.—The pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours against the pressure needed to supply all parts of the pipe system with an abun-
153 dant supply of water. They shall be so arranged as to be operated separately or together.

Boilers.—The boilers shall be of ample capacity to operate the pumping engines and shall be so arranged as to be operated separately or together as may be required.

Stand pipe.—There shall be a stand pipe or a reservoir of sufficient capacity and height or elevation to furnish an ample supply of water for consumption at the highest points along the line of the mains.

Pump house.—The pumps and boiler house *sa*ll be a substantial stone or brick building of ample size for the pumps and batteries of boilers. The smoke stack will be of brick of the size needed to operate the boilers.

Source of supply.—The *a*ater shall be taken from such point as may be free from all sewerage, contamination, and shall be good wholesome water fir for all purposes of domestic or manufacturing consumption.

SECTION 3. In consideration of the public benefit and the protection to property resulting from the construction of the said system of water works the mayor and aldermen of the city of Vicksburg hereby rent of the said Samuel R. Bullock & Company their associates, successors and assigns not less than eighty (80) double nozzle frost proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth days of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five (65.) dollars payable as aforesaid and for the remainder of said period of thirty (30) years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor & aldermen of the city of Vicksburg shall be at the annual rate of fifty ($50.) dollars for each hydrant payable as aforesaid during the unexpired period of the said original term of thrity (30) years.

154 Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only provided that for fire practice and flushing sewers no more than two hydrants shall be opened at one time and not more than once in each week.

SECTION 4. Water shall be furnished free of charge to the public schools, and all other public buildings used exclusively for city purposes and for filling public cisterns and the city hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid to within seven hundred and fifty (750) feet of said hospital. And water shall also be supplied free for six (6) drinking fountains with openings for man and beast and one public fountain to be erected by said Samueal R. Bullock & Company in such place on the line of mains as the board of mayor & aldermen of the city of Vicksburg may direst.

SECTION 5. The said Samuel R. Bullock & Company, their asso-

ciates, successors or assigns may procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder. Provided that such assignment shall not invalidate of effect the bond required by section seven (7) hereof and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass ans enact such further and other ordinances and do and perform such other acts, including the re-passage of this ordinance, in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

SECTION 6. Upon the completion of the construction of the said system of water works the said Samuel R. Bullock & Company their associates, successors and assigns shall notify the mayor and aldermen of the city of Vicksburg to that effect in writing and thereupon submit the works to such a test as will show the capacity of thw works to be sufficient to throw four (4) fire streams through one hundred feet of two and one half inch hose and one inch nozzle and from four (4) different hydrants a stream not less than
155 fifty (50) feet high at the highest elevation on which any of such hydrants are located. On the satisfactory performance of this test the said board of mayor and aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 7. Within fifteen — after the day that this ordinance takes effect the said Samuel R. Bullock and Company, their associates, successors and assigns shall file their written acceptance thereof, binding themselves to its terms and obligations, in the office of the city clerk accompanied by their bond in the penal sum of ten thousand ($10,000) dollars with two or more sufficient sureties to be approved by said board of mayor & aldermen executed to the mayor and aldermen of the city of Vicksburg and conditioned for the faithful compliance with the terms of this section. On failure to file such bond within said time this ordinance shall become null and void. But if said board shall not approve a bond so filed, said board may in its discretion grant additional reasonable time within which to file another bond.

The construction of the said system shall commence within sixty days after this ordinance takes effect, and said system shall be completed within eighteen (18) months after the commencement of the *constructio-* thereof *provided however* that the time during which the said Samuel R. Bullock & Company, their associates successors or assigns are delayed by floods, act of God or the public enemy, legal proceedings for the maintenance or defense of their legal rights or in the acquisition of property or right of way, or by reason of any other causes whatever beyond their control shall form no part of the time limited in this ordinance for the performance of any act re-

quired by the terms hereof to be done by them, but they shall use all due diligence to remove any such obstructions or delays.

SECTION 8. The said board of mayor and aldermen of the city of Vicksburg shall from time to time pass and enact ordinances under suitable penalties providing for the protection of the said works from damage, fraud or imposition.

SECTION 9. At the expiration of each period of ten years after this ordinance takes effect, the mayor and aldermen of the city of Vicksburg shall have the right and privilege to purchase the said system of water works provided they notify the said Samuel R. Bullock & Company, their associates, successors or assigns, of their in-
156 tention to do so, at least one year before the expiration of the said period of ten (10) years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns and the board of mayor & aldermen of the city of Vicksburg shall severally appoint one person, the two appointees shall choose a third, and the three persons thus chosen, who, shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the board shall be residents of the said Warren county. The said mayor and aldermen of the city of Vicksburg shall within sixty days after the said board *have* rendered its decision, pay the amount awarded in cash. A failure to so pay the award or to give notice of intention to purchase as above provided shall operate as a waiver of the right to purchase until the expiration of the next succeeding period of ten (10) years.

SECTION 10. The said Samuel R. Bullock & Company, their associates, successors and assigns shall make extensions to their line of mains whenever called upon so to do by the mayor and aldermen of the city of Vicksburg. Provided, however, that said extensions shall be not less than 500 feet — length and that one public fire hydrant shall be located on each five hundred feet or major portion thereof, and *further provided* that two thirds of the residents in the line of such extension shall agree to take water at the established rates for a period of at least two years, but the said Samuel R. Bullock and Company, their associates, successors and assigns may voluntarily make such extensions from time to time as they may deem necessary.

SECTION 11. After the works are *out* in operation, if at any time the pressure gauges located at the points hereinbefore named shall indicate a pr-ssure of less than twenty (20) pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pr-ssure in this section provided shall be attained, provided however, if the pressure indicated as aforesaid, shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Company,

their associates successors and assigns acquired by virtue of
157 this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates, successors and assigns from temporarily shutting off the water from its said system or any portion thereof for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors or assigns for the suspension of the supply of water provided the repairs or extensions are *amde* and the water turned on again without unnecessary delay. But the city shall *ne* be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained, That as a part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Co., their associates, successors and assigns, the said water works and the property and business *pretaining* thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation, and all of the property and business *pretaining* to and employed in and about said system of water works, shall thereafter during each year of the balance of the period of this contract, be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars (50,000).

SECTION 13. The said Sam'l R. Bullock & Co., their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and general operation of the works and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water.

SECTION 14. Be it further ordained That for the purpose of paying the obligations and liabilities of the said mayor and aldermen of the city of Vicksburg which shall accrue to the said Sam'l R. Bullock & Company their associates successors or assigns by virtue of the terms and conditions of this ordinance, the mayor and aldermen of the city of Vicksburg or other duly constituted municipal authorities shall annually levy and cause to be collected upon the taxable property of said city a special tax, to be known and desig-
158 nated as the water works tax, sufficient to meet and pay all of said obligations and liabilities during the continuance of this contract and until all of said obligations and liabilities shall be paid and discharged.

SECTION 15. Be it further ordained, That this ordinance shall take effect from and after its approval by the mayor.

Ordained this 18th day of November, 1886.

(Signed) H. J. TROWBRIDGE, City Clerk.

Approved this 19th day of November, 1886.
(Signed) JOHN W. POWELL, Mayor.

159 EXHIBIT "C"

Charter of Incorporation of the Vicksburg Water Supply Company.

Article I.

E. S. Bunts, John B. Mattingly, L. W. Magruder, Clarence Delafield, and Chester R. McFarland, and such other persons as may become their associates and successors, are hereby created a body politic and corporate, by virtue of chapter XXXVIII, of the Revised Code of 1880 of the State of Mississippi, and the acts of the legislature of said State, amending and supplementing the same, under the name and style of "The Vicksburg Water Supply Company."

Article II.

The domicil and principal place of business of this corporation shall be the city of Vicksburg, in Warren county, Mississippi, but an additional or branch business office may be established and maintained in the city of New York, in the county and State of New York. Meetings of the board of directors may be held and this corporation may transact any of its business or affairs at either its principal place of business or at its branch office as aforesaid.

Article III.

The purposes for which this corporation is created are to construct, maintain and operate a system of waterworks to supply the city of Vicksburg, in Warren county, Mississippi, and the vicinity and the inhabitants thereof with an adequate supply of pure and wholesome water for all public and private uses.

Article IV.

The powers to be exercised by this corporation are as follows: To have perpetual succession; to determine the manner of calling and conducting meetings, to determine the number of shares that shall entitle its members to vote and the mode of voting by proxy; to elect all necessary officers and to prescribe their duties, salaries and tenure of office; to sue and be sued and prosecute and be prosecuted to judgment and satisfaction before any court of justice in the State; to have a corporate seal; to contract and be contracted with within the limits of its corporate powers; to make charges for supplying water and to collect payment therefor at such rates and upon such terms as may be agreed upon with consumers; to make all necessary by-laws not inconsistent with the laws of Mississippi, to increase or diminish its capital stock from time to time to any amount by vote of

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its stock holders, as hereinafter provided; to hold and own real and personal property to any amount and to sell, exchange and encumber the same; to borrow money and secure the payment of the same by a mortgage or deed of trust upon its property, revenues and franchises; to issue its bonds or other evidences of debt and secure the payment of the same by a mortga-e or deed of trust upon it-property, revenues and franchises; to sell, exchange, pledge or hypothecate such bonds or other evidences of debt.

This corporation shall also have the power of acquiring by purchase or otherwise and assigning to it of any contract which the city of Vicksburg may have heretofore entered into with any other persons to provide a supply of water to the city of Vicksburg and its inhabitants, and of succeeding to and exercising and enjoying all, and singular, the rights, powers, privileges, advantages, benefits, immunities, revenues and profits arising out of, or accruing from, such contract, which said city, by ordinance or otherwise, may have conferred and granted to such person or persons; and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of this organization, and as may now or hereafter be conferred by the laws of the State of Mississippi.

Article V.

The capital stock of this corporation shall be two hundred and fifty thousand dollars, divided into five thousand shares of the par value of fifty dollars each, which shall be paid in such installments, and in such manner as the board of directors may determine; and the said capital stock or any part thereof may be issued for money, or for property actually received by or labor or services actually rendered to this corporation on such terms as it may contract and deem necessary and proper for the transaction and conduct of the business and purposes for which it is incorporated; and when so issued, it is to be taken and deemed by all parties in interest as fully paid up at its face value, and subject to no further calls or assessments whatever, and this corporation may issue and dispose of its bonds in like manner.

Each stock holder shall be entitled to a certificate under the seal of this corporation, and signed in its name by its president and countersigned by its treasurer, specifying the number of shares to which he may be entitled, which shall be transferable as now provided by law.

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Article VI.

The business and affairs of this corporation shall be conducted by a board of directors consisting of five persons, a majority of whom shall constitute a quorum. The first board shall be elected as hereinafter provided and thereafter said board shall be elected by the stock holders from among their own number at their annual meeting as hereafter provided. The said board is hereby vested with

full power and authority to do all things necessary and requisite to carry into effect the purposes for which this corporation is created.

Within twenty days after its election, the said board shall meet in the city of Vicksburg, or in the city of New York, and elect one of their own number president, and shall appoint or elect a treasurer and secretary who may be directors and latter offices may be held by one and the same person, and such other officers, agents and employés as said board may deem expedient. The said officers and board of directors shall hold offices for one year, and until their successors are elected and qualified, and enter upon the performance of their duties, which shall be such as are ordinarily exercised by such officers, and as may from time to time be prescribed by the by-laws or the board of directors.

The annual meeting of the stock holders shall be held at the city of Vicksburg, Mississippi, on the *day* second Wednesday in the month of May in each and every year, commencing with the year 1888, between the hours of nine o'clock a. m., and four o'clock p. m., in pursuance of such notice as may be prescribed by the by-laws, and at such meeting the stock holders shall elect the board of directors for the ensuing year and transact such other business as may be lawfully brought before it. At all stock holders' meetings a majority of the votes of the stock holders present or by proxy shall govern, except as herein otherwise provided.

In case of a failure to hold the annual meeting on the day herein prescribed, the same may be held on such subsequent day as the by-laws or board of directors shall appoint, and the said annual meeting may be adjourned from time to time, and any business may be transacted at such subsequent or adjourned meeting as might have been transacted on the day fixed herein for the annual meeting.

The by-laws shall prescribe the time of holding and the mode of calling regular and special meetings of the board of *the board of* directors.

162 Article VII.

The corporators herein named shall meet in pursuance of a written notice to that end, designating the time and place of meeting signed by any two of them and delivered to the others at least one day previous to such meeting, and when duly assembled, shall proceed to organize this corporation by the election of the first board of directors and for that purpose any three of said corporators shall constitute a quorum.

Article VIII.

The stock holders of this corporation shall not be individually liable for any debt, loss, damage or liability contracted or incurred by said corporation. But each stock holder shall be liable for the amount or balance that may be due for stock subscribed for by him, according to the statute in such case provided.

Article IX.

This charter shall not be altered or amended except by the assent of a majority of the stock holders, of this corporation expressed at any annual meeting or at a meeting called in pursuance of a notice stating the purpose of the meeting, signed by the owners of at least one third of the capital stock or by the president and secretary of this corporation on the written request of at least one third of the capital stock, and published at least once in each week for two consecutive weeks immediately preceding the date fixed for said meeting, in any newspaper of general circulation published in the city of Vicksburg, Mississippi, and the said assent certified to by the president and secretary of this corporation shall accompany the application for the proposed alteration or amendment.

In case any alteration or amendment is made to this charter a notice thereof directed to the stock holders of this corporation generally and clearly disclosing the nature of the alteration or amendment so made, shall be published once in each week for four successive weeks immediately following the date of the meeting at which the same was made, and such alterations or amendments shall be binding on all the stock holders unless those dissenting shall, within thirty days after knowledge that the same has been made, enjoin this corporation from acting under such alterations or amendments and if any stock holder or member shall fail to do so, he shall be estopped to deny the validity or binding effect thereof.

In testimony whereof, witness our signatures this the 1st
163 day of February, A D. 1887.

J. B. MATTINGLY.
E. S. BUTTS.
L. H. MAGRUDER.
CLARENCE DELAFIELD.
CHESTER R. McFARLAND.

Approval of Attorney General.

There is nothing in the within charter of incorporation violative of the constitution or laws of this State.

T. M. MILLER,
Attorney General.

164 EXHIBIT "D."

Know, all men by these presents, that, whereas the mayor and aldermen of the city of Vicksburg, State of Mississippi did on the 18th day of November, 1886, pass and enact a certain ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, giving

the said city of Vicksburg an option to purchase the said works," which ordinance was thereafter on the 19th day of November 1886, duly approved as required by law.

And whereas under and by virtue of section 5 of the aforesaid ordinance the grantees thereof were empowered to procure the organization of a water works corporation with the right to assign to it all the rights and privileges acquired thereunder.

And whereas in pursuance of section 5 of the aforesaid ordinance the said grantees have procured the incorporation of the Vicksburg Water Supply Company under the laws of the State of Mississippi.

And whereas the terms and conditions of section 7 of the said ordinance as to acceptance of the said ordinance and filing of the penal bond as therein provided, has been duly complied with,

Now therefore know ye that for and in consideration of the sum of one dollar lawful money of the United States of America and other valuable considerations to us in hand paid by the Vicksburg Water Supply Company a corporation existing under and by virtue of the laws of Mississippi, the receipt of which is hereby duly acknowledged, we, said Samuel R. Bullock and William S. Mercer composing the firm of Samuel R. Bullock and Company, for ourselves, our personal representatives and assigns, have assigned,
165 transferred and set over, and do by these presents, assign, transfer and set over unto the said Vicksburg Water Supply Company and its successors and assigns, all our right title and interest in and to the ordinance aforesaid, and all ordinances, resolutions and orders adopted subsequent to the aforesaid ordinance, and in any manner relating thereto, as fully and to all intents and purposes as if the said The Vicksburg Water Supply Company had been originally named as grantee therein.

In witness whereof, we have hereunto set our hands and seals this first day of March, 1887.

SAM'L R. BULLOCK.
WM. S. MERCER.

Sealed and delivered in the presence of
JAS. A. RYERSON.

STATE OF NEW YORK,
City and County of New York, } ss:

Be it remembered that on this 16th day of March, in the year one thousand eight hundred and eighty seven before me the undersigned, Edwin F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Mississippi to take acknowledgements of deeds, &c., to be used or recorded therein, personally appeared the within named, Samuel R. Bullock and William S. Mercer, who acknowledged that they signed, sealed and delivered the foregoing instrument on the day and year therein mentioned as their act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year last aforesaid.

(Signed) EDWIN F. COREY,
[SEAL.] Commissioner of the State of Mississippi.

Office 60 Wall St., N. Y.

EXHIBIT " E."

Know, all men, by these presents: That whereas the mayor & aldermen of the city of Vicksburg did on the 18th day of November, 1886 pass certain ordinance entitled, "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates successors, and assigns for a supply of water for the public use, and giving the said city of Vicksburg an option to purchase the said works

166 And whereas under and by virtue of section 5 of the said ordinance the grantess thereof were authorized to procure the organization of a water works corporation and to assign to it all the privileges acquired thereunder.

And whereas in pursuance of said authority the Vicksburg Water Supply Company has been incorporated under the laws of the State of Mississippi, and under and by virtue of a certain assignment bearing date March 1st. 1887, the said company has succeeded to all the rights and privileges acquired under the aforesaid ordinance by the said Samuel R. Bullock and Company.

And whereas it is provided by section 5 of the said ordinance that no assignment shall be valid unless the assignee shall accept the said ordinance in writing.

Now therefore be it known that the Vicksburg Water Supply Company for itself, its successors and assigns *have* accepted and by these presents accept- and agree- to become bound by the terms and obligations of the aforesaid ordinance.

In witness whereof the said company has caused this acceptance to be signed in its corporate name by its president and its corporate seal attached by its secretary to be hereto affixed this first day of March, 1887.

[SEAL.] (Signed) THE VICKSBURG WATER SUPPLY COMPANY,
By E. WOLTHAM, President.

Attest: CHARLES M. BERRIAM, Secretary.

I hereby certify that the above and foregoing is a true and correct copy of the original acceptance of the Vicksburg Water Supply Company as the same appears of record now on file in my office.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November, 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

EXHIBIT "F."

At an adjourned regular meeting of the board of mayor & aldermen of the city of Vicksburg, held on the 18th day of May, 1887, the following action was had, to-wit:

167 "The written acceptance of the Vicksburg Water Supply Company accepting and binding themselves to the terms and obligations of the contract as accepted by Samuel R. Bullock & Company, was read and ordered recorded."

I hereby certify the above to be true and correct.

Given under my hand and the corporate seal of the city of Vicksburg this 24th day of November 1888.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk of the City of Vicksburg.

EXHIBIT "G."

Whereas on the 8th day of August, 1900 at the Real Estate Exchange # 111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers Loan & Trust Company, trustee, recorded in Book — on page — of the records of deeds of Warren county, Mississippi, securing the payment of two hundred & fifty thousand dollars of bonds and interest thereon, there was sold under said deed of trust all of the property, real and personal belonging to the Vicksburg Water Supply Company located in Vicksburg, in Warren county, Mississippi, as well as elsewhere, and more particularly described as follows to-wit:

All of its real and personal property, goods and chattels now owned or which may be hereafter acquired by it, including its land water works, buildings, pump houses, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rent, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire and possess. And, also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the water company of, in and to the property above described or hereafter acquired, and each and every part or parcel thereof with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board of mayor & aldermen of the city of Vicksburg, Mississippi, dated on the

168 18th day of November, 1886, and approved on the 19th day of November, 1886, for the rental of hydrants for the use of

the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company, on the first day of March, 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor & aldermen on the first day of March, 1887, of Bullock & Company's assignment of said contract to *to* the Vicksburg Water Supply Company and of the Vicksburg Water Supply Company's acceptance of contract; whereupon the board of mayor & aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th day of May, 1887.

Now therefore, at said sale as aforesaid, said Vicksburg Water Works Company of Vicksburg, Mississippi, purchased said property, contract, &c., as above described and set out,

Now therefore for the consideration of one dollar, cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claim- all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property as above described, real and personal, or that it may now own, or may have owned or may hereafter acquire, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

In witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by respective secretary, to be hereto affixed on the 18th day of October 1900. Revenue stamps having been affixed to deed from Farmers Loan and Trust Company to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,
[SEAL.] President of the Vicksbury Water Supply Company.

W. G. SNOW, Secretary.

STATE OF NEW YORK, }
New York City and County, } *ss*:

Personally appeared before me Charles Edgar Mills, a duly
169 authorized commissioner of deeds for the State of Mississippi, in New York, residing in New York, city and State, the within named Whitney Conant, president of the Vicksburg Water Supply Company and W. G. Snow, secretary, who each acknowledged that they had signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the uses

and purposes therein mentioned they being -hereto duly authorized. That the corporate seal attached is the corporate seal of said company and was duly affixed thereto by due authority.

Given under my hand and official seal this October. 18th, 1900.

(Signed) CHARLES EDGAR MILLS,
[SEAL.] Commissioner for the State of Mississippi in New York and Notary Public for New York County and State.

STATE OF MISSISSIPPI, Warren County, } *ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th day of December, 1900 at 9–10 o'clock a. m. and duly recorded in Deed Book 93 page 46*e et seq.*,

Witness my hand and seal of said court this 10th day of December, 1900.

(Signed) J. D. LAUGHLIN, Clerk,
[SEAL.] By J. L. HYLAND, D. C.

EXHIBIT "H."

To the honorable board of mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: On the 18th day of September, 1900, I, as secretary of the Vicksburg Water Works Company notified you that it was the assignee and owner of a certain written contract entered into between Samuel R. Bullock & Company of the one part, and the board of mayor and aldermen of the city of Vicksburg of another part, approved and accepted on the 19th day of November 1886 by both parties, whereby Bullock and Company their associates, successors and assigns for certain considerations therein mentioned *is* to supply the city with water for public and private use but I withdrew the notification until the board of directors of the Vicksburg Water Works Company could officially meet and accept said contract and authorize me to give you notice, and the same having been
170 done by the Vicksburg Water Works Company by resolutions by said board of directors, now therefore, this instrument in pursuance of their action and request in this behalf, is to inform you that the Vicksburg Water Works Company of Vicksburg, Mississippi is the owner of said contract and has been, since about the fifteenth day of August, 1900, and in accordance with its minutes by resolutions adopted by its board of directors it thereby accepted said contract and said ordinance and became bound by its terms, conditions and obligations in every respect as the assignee and owner of said contract, and I as its secretary was instructed to give you said notice of its acceptance as above set out.

Witness its hand and seal of its secretary this 19th day of November, 1900, at Vicksburg, Mississippi.

(Signed) M. O. CRUMPLER.

I received a copy of said notice the 20th day of November, A. D. 1900.

(Signed) H. J. TROWBRIDGE,
City Clerk.

EXHIBIT "I."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th day of November, 1900, amongst other proce-dings had at said meeting, was the following to-wit:

Resolved, That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and the seal of said city this 13th day of November, 1900.

[SEAL.] (Signed) H. J. TROWBRIDGE,
City Clerk.

(Copy.)

EXHIBIT "J."

Resolved:—That the water works committee is instructed
171 to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water works system not to exceed in value $150,000 including all the expenses of engineering supervision etc., etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant, machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers, the condition of the system as to repairs, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at an early day as possible for the action of this body.

EXHIBIT "K."

To the honorable board of mayor and aldermen of the city of Vicksburg:

When your petitioners purchased the water works of this city, it knew that it- dependent source of revenue and support must come from its contracts with the city and citizens to supply the same with water as a protection against fire, private use, etc., and that it has been supplying said city and citizens with water for these purposes and faithfully in accordance with said contracts and with the understanding that the city would pay the contract price to petitioner as agreed, but notwithstanding this contract and faithful delivery, the city through you, is now refusing to carry out and pay the contract price to the petitioner as agreed upon for water received and used by you, but offers a wholly and inadequate price for said water so received and used.

Your petitioner shows aside from the legal obligations under this contract, the unjust proposition in offering to pay what you call a reasonable price for services rendered, in this, the city through its citizens are now only obligated to pay your petitioner under contract price $7,600.00 annually, while the city or its citizens are saving about $35,000.00 annually on insurance alone, caused or brought about solely by the water used by you, thereby leaving a net gain after paying $7,600.00 of over $25,000.00 annually to the city or her citizens which are one and the same, aside from the further
172 benefits received by you free of charge, such as public fountains, schools, hospitals etc.

Your petitioner further shows that we are anxious and willing to keep up this constant supply of water and maintain the pressure thereof, but, should you reduce the present price or refuse to pay at all, it will simply be impossible for your petitioner to keep up its enormous expenses and maintain itself, and supply water because you know and realize that it is impossible for any concern to continuously run its business at a loss. With the present price which you are now obligated under said contract to pay for said water, it is almost impossible for your petitioner to operate and live. The water company has and did offer to the water committee and the attornies for the city that the water company would give the city assurance in writing that the payment for water received and used by the city at the contract price, should not in any way prejudice the city's suit against the water company.

The foregoing has the following indorsement, to-wit: No. 41. Vicksburg Water Works Company *vs.* Mayor and Aldermen of Vicksburg.—Bill of complaint.—Filed Feb'y 16th, 1901, L. B. Moseley, clerk. C. D. Banks, D. C. No. 1. S. S. Hudson, attorney at law, Vicksburg, Miss.

173 EXHIBIT "X."

This indenture made the first day of March in the year 1887 between the Vicksburg Water Supply Company, a corporation created by and organized under the laws of Mississippi at the city of Vicksburg, party of the first part and hereinafter designated "the water company" and the Farmers Loan & Trust Company a corporation created by and organized under the laws of the State of New York, party of the second part, hereinafter designated "the trustee." Witnesseth:

Whereas the water company was incorporated for the purpose of conducting, maintaining and operating a system of water to supply the city of Vicksburg, Mississippi, and its inhabitants with water, and whereas in order to effect its corporate purposes the water company has determined to issue 250,000 of its coupon bonds in form as follows, and to secure the payment by mortgaging its property and franchises.

The Form of Coupon.

Humber —. $1,000.00.

UNITED STATES OF AMERICA,
City of Vicksburg, State of Mississippi, County of Warren.

Vicksburg Water Supply Company. Vignette. First Mortgage Six per Cent. (6 %) Thirty (30) Year Gold Bond.

Know all men by these presents, that the Vicksburg Water Supply Company is indebted to and hereby promises — Samuel R. Bullock & Company or bearer one thousand dollars ($1000.00) in gold coin of the present weight and fineness lawful money of the United States of America at the office of the Farmers Loan & Trust Company in the city of New York on the first day of March, in the year 1917, with inter-st thereon at the rate of six per cent. (6 %) per annum payable at the same place in like gold coin on the first day of March and September in each and every year unti- the majority hereof upon the presentation and surrender of the next coupon- therefor as they respectively become due, free from all United States and municipal taxes levied or to be levied. This bond is one of a series of the two hundred and fifty (250) bonds of the like amount, tenure and date numbered from one (1) to two hundred and fifty (250) both inclusive. Amounting in the aggregate to two hundred and fifty thousand dollars ($250,000), and is secured by an issue subject
174 to the provision of the first mortgage or deed of trust therein of even date herewith conveying to the said Farmers Loan & Trust Company in trust for the benefit of the holders of the said series of bonds and the property and franchises of the said Vicksburg Water Supply Company now owned or hereafter to be acquired by it and

more particularly described therein. This bond shall not become valid until the certificate indorsed herein shall have been signed by the said trustee.

In witness whereof the said Vicksburg Water Supply Company has caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereto affixed, the first day of March, A. D. 1887.

VICKSBURG WATER SUPPLY COMPANY,
By —— ——, President.

Attest: —— ——, Secretary.

$30.00. Form of Coupon. $30.00.

The Vicksburg Water Supply Company hereby promises to pay to the bearer at the office of the Farmers Loan & Trust Company in the city of New York on its surrender -hereof thirty ($30.00) dollars in United States gold coin on the — day of —— 18— being six months' interest due on that day on its first mortgage six per cent. (6 %) thirty year (30) gold bond.

—— ——, Treasurer.

Form of Trustee's Certificate.

Trustee's Certificate.

It is hereby certified that this bond is one of the series described and referred to in the mortgage or deed of trust within mentioned.

THE FARMERS LOAN & TRUST COMPANY.
—— ——, Trustee,
By —— ——-, Trustee.

Now this indenture witnesseth that the water company to better secure the payment of the principal and interest of said bonds ratably and without discrimination or preference according to the true intent and meaning thereof and also for and in consideration of the sum of one ($1.00) dollar in money of the United States of America to it in hand paid by the trustee, a receipt of which is hereby acknowledged hath granted, bargained, sold, alien-, remised, released, conveyed and confirmed and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the trustee and its successors forever all of its real and personal property, goods,
175 chattels now owned or which may be hereafter *be* acquired by it including its land, rents, water works, buildings, pump houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments situated in the city of Vicksburg, county of Warren State of Mississippi, together with all and singular the

tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversion-, remainder and remainders, tolls, rents, issues, income, and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has and can exercise or shall hereafter acquire or possess, and also all the estates, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the water company, of in and to the property above described and each and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above granted and described premises with the appurtenances unto the trustee and its successors forever.

In trust nevertheless and to and for the uses and purposes hereinafter expressed of and concerning the same for the equal pro rata, benefit and security of all who may become the lawful owners and holders of any of the bonds and coupons intended to be secured hereby without any provisions of priority of any bond over another by the name of priority in the time of issue or negligence or otherwise. And in order to carry out the purposes of this trust it is covenanted and agreed:

1st. Until default shall be made in the payment of the interest of said bonds according to their tenure of the terms of this instrument or in the payment to be made in the "sinking fund" as hereafter provided and as long as the condition and agreements herein contained shall be faithfully preserved the water company shall *reatin* possession of the above granted and described property, and use, enjoy and operate the same and the leases, issues, incomes and profits thereof to take, have and apply to and for its sole use and benefit but in such manner as will not impair the security thereby created.

2nd. Should any default be made in the payment of the principal or interest of the aforesaid bonds according to their terms or the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then upon the written request of the holders of at least one fourth of the aforesaid bonds then owing and outstanding so to do and in proper indemnification being made against the costs and expenses to be incurred
176 the trustee or its successors shall have the right by its agent, attorney or servants to enter into, upon and take possession of all and singular the property hereby conveyed or intended so to be, and to every part and portion thereof and have use and operate the same and exercise the privileges pertaining thereto and make such repairs and replacements or improvements as it may in its discretion deem necessary for the proper preservation and operation of the said mortgaged property and take collect and receive the earnings, income, liens, issues and profits of the same, and after deducting the expenses incident thereto including a reasonable compensation to the trustees and all taxes, rents or assessments due thereupon to apply the money so arising from the said mortgage- property to the payment in full of the interest coupon- in default of said bonds

in the order that they may fall due and after paying such interest as shall be unpaid and in arrear to render the over-plus if any there be and surrender the mortgage- premises unto the water company or its successors to be managed by it as if such default had never taken place. Provided however that if the trustee shall take possession in case of default in the payment of the principal of the aforesaid bonds according to their terms of the instrument or if such default be made while the trustee is already in possession after the payment of the interest and other expenses as above provided as the same may *be* from time to time become due and payable, the trustee shall apply the residue of said money to the payment and extinguishment of the principal *to* the aforesaid bonds ratably and without discrimination or provisions and shall continue in possession of and shall operate and manage said mortgage- property until the said principal is fully paid and satisfied, and after paying said principal and interest and other expenses in full shall render the over-plus and surrender the mortgaged premises and property unto the water company or its successors free of and released from the rent thereby created and provided further that in case of default in the payment of interest in the manner and period aforesaid if the holders or at least a majority of the bonds then owing and outstanding shall notify the water company and the trustee or their respective successors in writing before the interest so in default has been paid that they the said bond holders elect that the
177 principal of all of the bonds secured hereby and then owing and outstanding become and be due and payable then upon such election being made and notice being given as aforesaid the principal of all of said bonds shall immediatel*t* become and be due and payable although the period therein limited for the payment thereof shall not then have expired.

3rd. If default shall be made in the payment of the principal or interest of the aforesaid bonds according to their terms o*f* the terms of this instrument and should the same remain unpaid and in arrear for the space of six months then it shall be lawful for the trustee or its successors on being indemnified as aforesaid and upon a written request of the holders of a majority of the said bonds then owing and outstanding. So to do after entry as aforesaid or other entry or without entry to use or dispose of all the property and franchises of every kind and description hereby conveyed and of benefit and equity of redemption of the water company and its successors and assigns and of persons claiming under them in and to the same on publication to the highest bidder after a notice thereof to be published in one or more newspapers of general circulation printed in the city of Vicksburg, State of Mississippi and the city of New York, once each week for twelve successive weeks and on the day of sale and buy such from and other notices or requirements as may be necessary under the laws of the State of Mississippi. The sale to be held in the city of Vicksburg or in the city of New York, with the power to the trustee to adjourn the same from time to time as its discretion by advertise-

ment or announcement *at* the time and place of the proposed sale, and the attorney for the water company or its successor for that purpose by these presents authorize-, constitute- and appoint-, to make execute and deliver to the purchaser or purchasers thereof a good and sufficient deed in fee simple or at the discretion of the trustee aforesaid, to foreclose and sell the equity of redemption to the water company or to other persons having a legal or equitable right or claims *or* in or to the mortgaged premises, or any portion thereof by proceeding in law or equity or in any court, or tribunal of competent jurisdiction which sale so to be made in either of the modes herein described shall forever be a perpetual bar both in law and equity against the water company, its successors or assigns, and against all other persons claiming or to claim the said property or any
178 part thereof, by from or under them or any of them, the water company hereby expressly waives the benefit and advantage of any and all valuation, stay*ed* appraisement, or exemption laws, and all laws requiring a mortgage or other securities for money to be foreclosed for action therefor now in force and which may hereafter be in force under the laws of Mississippi.

4th. In case of a sale of the property hereinbefore mentioned in either of the modes here-before described the trustee shall apply the proceeds hereof after deducting the cost and expenses of said sale to the payment in full ratably and without discrimination for preferance in case there is a deficiency of the principal of all of said bonds, then due and outstanding and the interest due thereon up to the time of such application *rating* the over plus if any there be unto the water company its successors or assigns.

5th. In the event of the sale under the terms of this mortgage it shall be lawful for any bond holder or bond holders or for the trustee on behalf of such of them as may unite in authorizing it so to do to purchase the property and franchises hereby conveyed and the bonds and coupons held by the purchaser, the bond holders -*ah*ll receive in payment of the purchase money so obtained at said sale by them or by the trustee on their, behalf, the said sum paid in cash, equivalent to the amount which the purchase bond holders shall be entitled to out of the proceeds of such sale after *after* deducting all legitimate cost and expenses provided however that the purchasing bond holders so request- the trustee to purchase the said mortgage property o*b* their behalf shall cont*i*rbute in cash their portion *at* the expense of said sale or in case of a purchase by the trustee of this section the property and franchises shall be held by it in trust for the benefit of such bond holders only as may have authorized it to purchase on their behalf and free *for* the lien of these presents.

6th. If the water company shall well and truly pay or cause to be paid the principal and interest of the said bonds when the same shall become due and payable according to the tenure of said bonds and c-upons thereto attached and shall comply with all other requirements hereof according to the true intent and meaning of these

presents then and in that event all of the estate, right, title, and interest of the trustee and its successors, in the trust hereby
179 created shall cease, determine and be null and void, otherwise the same shall be and remain in full force and virtue.

7th. If at any time the trustee or its successors shall enter into and take possession of said property or the trustee to sell the same by reason of any default in the payment of any principal or interest or anything required to be done by the water company as herein provided the water company shall have the right at any time prior to the actual sale of said property to pay and satisfy in full the principal of said bond- and the interest thereon to the date of payment together with all just and proper cost, charges and expenses paid or incurred by the trustee and a reasonable compensation for its services and upon such payment and satisfaction the trustee shall surrender to the water company all of said property hereby granted and shall execute and deliver to the water company such instrument as the water company may deem necessary and discharge these presents and records and to revest in it the title to said property and franchises.

8th. The water company and its successors and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in and to the hereinbefore granted property put there under or in trust for them shall and will at any time and times hereafter upon reasonable request of the trustee or its successors b*uy* — at the proper cost and charges in the law, of the water company its successors or assigns, m*ade*, do and execute, or cause or procure to be made, done or executed all and every such further and other lawful and reasonable, conveyance and assurance in the law for the better and more effectual vesting and confirming the property and franchises hereby granted or intended so to be and especially such property and franchises as shall be hereafter acquired in and to the trustee or its successors forever in trust as aforesaid as by the trustee o*f* its successors, or their *concern*, learned in the law shall be reasonabl*e* devised, advised or required.

9th. Should the trustee herein named resign*ed*, — for any reason whatever become incap*ic*-ated from acting under these terms it shall be lawful for the holders of the majority of the bonds then owing and outstanding, intended to be secured hereby to nominate by an instrument in writing executed under their hands and seals acknowledged in like manner, and the deed to be recorded in
180 the State of Mississippi, such persons or corporation to act in the premises instead of such out going trustee as they shall deem fit and upon a written acceptance of such persons or corporation so nominated and appointed to be made and executed in like manner and deliver- to the water company he or it shall become vested with the same estate, rights, powers and liabilities as if he or it had been expressly named as the trustee herein and thereupon all of the estate, right, title and interest of the outgoing trustee shall be divested, ceas*ed* and determine and be null and void.

10th. In any case herein provided — which the trustee shall have the right to enter upon the said mortgaged premises or to do any other act to enforce any provision hereof the holder or holders or the majority of the out-standing bonds may by written instrument sign- from time to time, instruct and require the trustee to waive, discontinue and defer the exercise of such right, absolutely or upon such terms as such majority may deem proper or as such majority may reverse or annul, the power of the tru-tee already exercised but the exercise of the aforesaid power of the trustee or the majority of the bond holders in case of one default shall in no wise affect their respective rights in case of a subsequent default.

11th. The trustee accepts the trust hereby created and its duties upon the following terms which are expressly agreed to — the recitals herein contained and made on behalf of the water company and not of the truatee.

The trustee shall be responsible only for its willful negligence or default and not for the act or default of any agent, attorney, or employee selected with reasonable discretion.

The trustee shall resign upon a notice to the water company of sixty days or upon shorter notice as the water company may accept as sufficient. The trustee shall not be bound to take any action toward the *inforcement* of any provision of this mortgage not to appear in or defend any suit or proceeding brought against it as such trustee unless previously indemnified to its reasonable satisfaction against all cost, claim, suits or liabilities incident to or which may resul*y* from such action or default nor to recognize any person as the holder of any of said bonds nor to take any action at his request even if indemnified as above provided, unless his bonds are submitted to the trustee for inspection and his ownership to the said bonds satisfactorily proved if disputed.

The trustee shall not be bound to record or file this mort-
181 gage or take any steps to make it a lien upon personal property or to renew or perpetuate, nor to insure the mortgage property.

The trustee shall have reasonable compensation for its services and be reimbursed for all of its proper expenses in executing the trust hereby created and such compensation and expenses shall be *at* first *charged* upon the trustee's estate and fees.

12th. The holder or holders of any of the said bonds or coupon-secured hereby shall not have the right to ins-itute suit or proceedings to *inforce* any provisions herein contained, unless the trustee shall refuse or neglect to institute the same after a written request from any bond holder or bond holders and at a reasonable opportunity so to do and the tender or receipt of a reasonable in*edmnity* against the cost and expenses of said suit, or proceeding, by such written request and tender or receipt of a reasonable indemnity shall be a condition precedent to the commencement of any suit or proceeding by any bond holder.

In witness whereof the Vicksburg Water Supply Company and

the Farmers Loan & Trust Company, have caused these presents to be signed in their respective corporate names by their respective presidents and their corporate seals attested by their respective secretaries, to be hereto affixed the day and year first above written.

VICKSBURG WATER SUPPLY COMPANY,
By E. WALTMAN, President.

Attest:
CHARLES M. BERREAN, Secretary.
[SEAL.]

FARMERS LOAN & TRUST COMPANY,
By R. G. ROLSTON, President.

Attest:
WILLIAM H. LEUPP, Secretary.
[SEAL.]

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this the third day of March, in the year 1887, before me the undersigned, Edwid F. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and *in* the laws of the State of Mississippi, to take acknowledgements of deeds etc., to be used and recorded therein, personally appeared E. Waltman, president, and Charles M. Berrean, secretary of the within named Vicksburg Water Supply Company who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of said company and
182 delivered the same as the act and deed of said company on the day and year therein mentioned. And E. Waltman of the said company being by me duly sworn did depose and say that he resides in the city of New York, *with* the seal affixed to the seal of the foregoing instrument *as* the corporate seal of the Vicksburg Water Supply Company and was thereto affixed by the authority of said company and that he as president together with Charles M. Berrean, as secretary subscribed their names thereto by like authority.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

E. F. COREY,
Commissioner for the State of Mississippi.

Office 60 Wall St., N. Y.

STATE OF NEW YORK, }
City and County of New York. }

Be it remembered that on this the fifth day of March in the year 1887, before me the undersigned Edwin F. Corey, a commissio-er duly commissioned and qualified by the executive authority and

under the laws of the State of Mississippi to take acknowle-gments of deeds etc., to be used and *are* recorded therein, personally appeared Roswell G. Robertson, presid*n*et and William H. Leupp, secretary, of the wit-in named Farmers Loan & Trust Company, who severally acknowledged that they signed the within named and foregoing instrument as such president and secretary sealed the same with the corporate seal of said company and delivered the same as the act and deed of said company on the day and year therein mentioned, and the said Roswell G. Robertson of the said Farmers Loan and Trust Company being by me duly sworn did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said Farmers Loan & Trust Company and was thereto affixed by the authority of said company and that he as president with William H. Leupp, as secretary, subscribed their names thereto by like authority.

In witness thereof I have hereto set my hand and affixed my official seal, the day and year last aforesaid written.

EDWIN F. COREY,
[SEAL.] Commissioner for the State of Mississippi.

Office 60 Wall St. N. Y.

STATE OF MISSISSIPPI, }
Co*i*nty of Warren. }

I George T. Hardy, clerk of the chancery court of said county hereby certifi*es* that the foregoing instrument was filed in my
183 office on the 10th day of March, 1887, at 12.45 o'clock p. m. and duly recorded in Deed Book Number 63 pages 48 to 57, inclusive.

Witness my hand and seal of court this 11th day of March, 1887.

[SEAL.] GEORGE T. HARDY, Clerk.

EXHIBIT "Y."

STATE OF MISSISSIPPI, }
County of Warren. }

In the Chancery Court.

To the Honorable W. C. Martin, chancellor:

The Mayor & Aldermen of the City of Vicksburg a municipal corporation under the laws of the State complainants exhibit this their bill of complaint against The Vicksburg Water Supply Company and The Vicksburg Water Works Company, corporations under the laws of the State of Mississippi and domiciled in the said city of Vicksburg defendants and respectfully shows:—

That on the 18th day of November, 1886 the said complainants in their said official capacity adopted an ordinance whereby a contract was entered into with certain persons doing business under the firm name and style and designated as Samuel R. Bullock & Company their associates, successors and assigns for a supply of water for public use:

That a copy of said ordinance is hereto annexed as Exhibit "A" and made a part of this bill.

It is provided in section (1) that in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty (30) year- from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist—may hereafter be extended and within such other territory as may now or hereafter be
184 under its jurisdiction for the purpose of laying pipes, mains, and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to the city of Vicksburg, Miss., and its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force: and further said section makes provision that the said Samuel R. Bullock & Company should exercise proper care and diligence in and about the construction of said works.

That by section 2 the general plan of said system of water works is defined including specifications as to mains, hydrants, gates and valves, pumps, boilers, stand-pipe, pump house and also as to the source of the supply of water.

It is specially provided under the head of pumps that the pumping plant shall consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four (24) hours, against the pressure needed to supply all parts of the pipe system with an abundant supply of water.

They shall be so arranged as to be operated separately or together.

By said section *of* the source of supply and character of water was specially designated in words as follows:—The water shall be taken from such point as may be free from all sewerage contamination, and shall be good wholesome water, for all purposes of domestic and manufacturing consumption.

By section three provisio*m* was made for compensation to the said Samuel R. Bullock & Company as follows:—In consideration of the public benefit and the protection to property resulting from the construction of said system of water works, the mayor & aldermen of the city of Vicksburg hereby rens*t* of the said Samuel R. Bullock & Company, their associates successors and assigns, not less than eighty

(80) double nozzle, frost proof, fire hydrants for the aforesaid period of thirty (30) years, at the annual rate of sixty-five dollars ($65) for each hydrant to be payable semi-annually on the fifteenth day of January and July. After the first year of the operation of said water works, the said city hereby rents not less than ten (10) hydrants in addition to the said eighty (80) for the unexpired period of said thirty years; the first one hundred hydrants shall be located on the original twelve (12) miles of mains, at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of said period of thirty years unexpired at the time of placing each
185 of said hydrants.

The rental of all hydrants in excess of one hundred (100) hydrants hereafter erected on the line of distributing mains or on the extensions thereof as hereinafter provided at the request of the said mayor and aldermen of the city of Vicksburg shall be at the annual rate of fifty dollars (50) for each hydrant, payable as aforesaid during the unexpired period of the original term of thirty (30) years * * *

By section — it is provided that the said Samuel R. Bullock & Company should supply and provide with water free of charge six drinking fountains with openings for man and beast at such places as the board of mayor and aldermen of said city might designate.

By section — it is provided as follows:—The said Samuel R. Bullock & Company, their associates, successors and assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder, provided, that such assignment shall nor invalidate or affect the bond required by section seven (7) hereof, and no assignment hereof shall be valid, unless such assignee shall, in writing to the said board of mayor & aldermen accept this ordinance and become bound by its terms and obligations. And the said board of mayor and aldermen shall pass and enact such further and other ordinances and do and perform such other acts, including the repassage of this ordinance in favor of the said corporation as may be necessary to vest in the said corporation the rights and privileges hereby granted.

By section eleven it is provided that a pressure of not less than twenty pounds on distributing mains shall be maintained at the highest point of elevation; and it is further provided if the pressure should be less than twenty pounds in two calendar months in succession then all of the rights and privileges of the said Samuel R. Bollock their associates, successors and assigns acquired by virtue of this ordinance shall at the option of the board of mayor & aldermen made in writing cease and determine * * *

It id provided in section twelve for a part of a consideration of the contract that the property and business of said water works shall be exempt from municipal taxation for the first five years of their operation and thereafter during the period of said contract all of said property and the business shall be assessed for tax-

ation for said city at a valuation not to exceed fifty thousand dollars.

186 That by section fourteen of said act it is provided that for the purpose of paying the obligations of the said mayor & aldermen accruing to the said Samuel R. Bullock and Company, their associates, successors and assigns under said contract the said mayor and aldermen shall annually levy and cause to be collected upon all the taxable property of said city a special tax to be known as the water works tax sufficient to pay said obligations during the continuance of the contract and until all of said obligations shall be paid and discharged.

Complainants further show that in pursuance of said contract the said Samuel R. Bullock and Company proceeded to construct and erect a system of water works in said city and that afterwards to-wit; on the — day of —— the said works were accepted by the said mayor and aldermen:

That thereafter the said Samuel R. Bullock & Company procured the organization of The Vicksburg Water Supply Company one of the said defendants, as a corporation under the laws of the State of Mississippi and by virtue of said section five assigned to said corporation said contract and afterwards on the — day of —— the said Vicksburg Water Supply — in writing accepted said ordinance and thereupon the said board of mayor and aldermen formally approved said assignment.

That the said Vicksburg Water Supply Company operated and owned said works from said date to the 15th day of August, 1900, and was actually paid the compensation fixed by said contract for the use of its hydrants aggregating the sum of about eight thousand dollars ($8000) per annum.

That on the first day of March 1897 the said Vicksburg Water Supply Company for the purpose of securing two hundred and fifty thousand dollars (250,000) of bonds executed a deed of trust upon all its property situated in the county of Warren and State of Mississippi, and described in said deed of trust as follows:—All its real and personal property goods and chattels now owned or which may hereafter be acquired by it including its land, water works, buildings, pump house, stand pipe, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements (hereditaments) thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents issues income and profits accruing therefrom also all and singular the corporate franchises, privileges, rights and liberties which

187 the water company now hath and can exercise or shall hereafter exercise or shall hereafter acquire and possess and also all the estate right title, interest property possession claim demand whatsoever as well in law as in equity of the water company of, in and to the property above described and each and every part and parcel thereof with the appurtenances.

That sometime in March, 1900 the said First national bank sold all of said mortgage bonds to certain persons to-wit: M. O. Crumpler and others in consideration of twenty-five thousand — ($25,000) cash and the further sum of one hundred and twenty-five thousand dollars (125,000) in certain mortgage bonds to be thereafter issued upon the said property.

That it was also agreed between said parties that the deed of trust above mentioned should be foreclosed in accordance with its terms default having been made by said company as to its obligations under said deed of trust.

That a sale of said property was afterwards made on the 15th day of August 1900 in the city of New York by the trustees under said deed of trust at which the property above described was sold to the said M. O. Crumpler and others which said property was afterwards by said Crumpler and others conveyed to the defendant the said Vicksburg Water Works Company.

Complainants further show that the contract entered into with Samuel R. Bullock & Company on the 18th day of November 1886, is null and void and the attempt by said mayor & aldermen to make such contract was a gross abuse of their rights and powers.

That the said mayor and aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official terms to bind constituted authorities of said city to pay rents for the said hydrants as therein stipulated:

That whatever may have been at the time a reasonable and just compensation to be paid to said water company for said hydrants such payment is now an *exclusive* (excessive) and unjust charge and an extortionate burden upon the tax-payers of said city.

Complainants show that the cost to construct a system of works like that at present operated at Vicksburg and owned by said defendant's water works company can be built, in every respect as good, for a sum not exceeding one hundred and thirty thousand dollars ($130,000). The present income of said water works including their claim against the city for annual rentals of said hydrants amount- in the aggregate to thirty thousand dollars ($30,000) per annum and that the expenses of every kind including improvements and betterments would not exceed an annual outlay of fifteen thousand dollars ($15,000) which would be a net return of ten per cent. upon an investment of one hundred and fifty thousand dollars ($150,000) and that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal and said board *exceed* its power and authority in making a contract stipulating for the period aforesaid said rates.

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Complainants further show that — the 25th section of the charter of the city of Vicksburg which was in force at the time of making said contract it is provided that the said mayor and aldermen shall not make any contract involving an expenditure of corporation funds, relating to work on public streets, or the erection, extension or re-

pair of public buildings, where the cost of the proposed work shall exceed five hundred dollars, or for material to be furnished exceeding two hundred dollars in value, except upon advertisement duly made for sealed proposals to do such work.

Neverthel-ss said mayor and aldermen entered into said contract wh-reby said terms were imposed upon said city for the period without any advertisement for sealed proposals as provided by law by reason wher-of said contract was unauthorized and is illegal and void.

Complainants further show that the said mayor and aldermen had no right to make provisions as was attempted to be done by the 14th section of said contract to make an annual levy of a special tax to be known as the water works tax to pay the obligation of said city accruing under said contract.

Complainants further show that by the terms of the first section the said mayor and aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Company the exclusive right and privilege for the period of thirty years of erecting maintaining and operating a system of water works within the corporate limits of the city of Vicksburg and for the exclusive use of the streets, alleys, public squares of said city for that purpose, for the purpose of supplying water to the city of Vicksburg and its inhabitants for public and private use.

That the said mayor and aldermen had no right or power
189 to make such contract; that an exclusive grant or monopoly of the kind is in contravention of the public policy of the State and is illegal and void.

That it is provided by section two of said contract that the pumping plant should consist of two pumping engines each capable of pumping two millions (2,000,000) of gallons of water per day of twenty-four hours.

Complainants aver and charge the fact to be that neither the Vicksburg Water Supply Company nor the Vicksburg Water Works Company have ever complied with the provisions of this section.

That in constructing said works originally the pumps were connected with the Mississippi river for a water supply but that the contrivance for that connection afterwards failed and the pumping of the water since 1889 from the supply has been made by pumps of inferior and unequal capacity to do the work required by said contract.

That said inferior pumps are used to take the water from the Mississippi river and to fill up a basin from which it is again pumped into the mains, by reason whereof said mayor and aldermen are entitled to have said contract annulled.

Complainants further show that the Vicksburg Water Supply Company and the Vicksburg Water Works Company have failed to provide for public and private use good and wholesome water.

That particularly since the 15th day of August, 1900 said Vicksburg Water Works Company have continuously from day to day and

are now furnishing water which is not good or wholesome: that the water which has been provided from day to day by said company is wholly unfit for use and deleterious to health and that it is not even fit for ordinary bathing purposes.

That notwithstanding public and other complaints to the contrary said company has persistently, negligently, wilfully and unlawfully disregarde- its obligations to said city in this regard, by reason whereof the said mayor and aldermen now claim the right to have said con*y*ract annulled.

That the purpose for which said works were constructed and organized was to provide not only the said city with fire protection but also its citizens with a supply of good and wholesome water for domestic use:

That such object and purpose has wholly failed by reason
190 of the negligence and disregard of its duties by said water works company in that regard.

Complainants further show and charge that the action of the said mayor and aldermen which undertook according to the provisions of section 12 of said contract to exempt the property and business of said water works from municipal taxation for five years and afterwards provide that the assessment of the said property should not exceed the sum of fifty thousand dollars ($50,000) was an abuse of the powers of said mayor and aldermen, whereby an unjust burden was imposed upon the tax payers of said city.

That said board had no right to make any exemption from taxation of said property and had no right to provide by contract for said assessment at fifty thousand dollars ($50,000) and the action of said board in this regard is illegal and void and said contract is in consequence a nullity.

Complainants further charge that the Vicksburg Water Works Company have negligently failed and refused to comply with the obligations imposed upon it by section eleven of said contract, wherein there is required a pressure of not less than twenty pounds shall be maintained upon the distributing mains at the point of their highest elevation.

That by said section it is further provided that if the pressure shall be less than twenty pounds for two calendar months in succession then all the rights conferred by said contract shall at the option of said mayor and aldermen made in writing cease and determine.

Complainants charge that the said Vicksburg Water Works Company have negligently failed for more than two calendar months to maintain said pressure at said elevation and the board of mayor and aldermen do now exercise their option and do now declare that the rights and privileges conferred by said contract shall cease and determine.

Complainants further show that the said board of mayor and aldermen at a meeting held on the 5th day of Nov. *it was* resolved and declared that the said board no longer recognized any

liability under said contract to said company, by reason whereof said complainant- say that said contract no longer exists.

Complainants further show that by the terms of section seven a bond was required to be executed by the said Samuel R. Bullock and Company for the faithful performance of the conditions of said contract and by section five the right was given to the said
191 Samuel R. Bullock & Company to procure the organization of a water works company, authorizing assignment to it of all rights acquired under said contract: It was further provided that no assignment of the contract should be valid unless in writing, the assignee should accept the ordinance:

That by the terms of these sections it was contemplated that there should be no assignment of said contract except to a company organized by Samuel R. Bullock and Company and made in pursuance of said provisions:

Complainants now show that the said Vicksburg Water Works Company have never acquired by assignment or otherwise said contract or any rights thereunder:

Complainants show that the matters hereinbefore set forth in respect of the sale to M. O. Crumpler and others of the mortgage bonds issued by the Vicksburg Water Supply Company and a foreclosure under the deed of trust securing the same are now made upon information and belief.

The mayor of this city on or about the — day of October 1900 addressed a formal communication to the Vicksburg Water Works Company requesting that it should *it should* inform the constituted authorities of said city of the muniments of its title and the right by which it claims to be the assignee of said contract. A copy of said letter is hereto annexed marked Exhibit "B" and made a part of this bill.

The said water works company have refused and still refuse to give to the said mayor and aldermen of said city any information in the premises.

That they have not been informed and do not now know anything concerning the alleged rights of the said Vicksburg Water Works Company in the premises further than its own declaration that it claims to own the water works plant situated in this city and claims the right to assert the rights and privileges granted to Samuel R. Bullock & Company under said contract:

Complainants now deny that the said Vicksburg Water Works Company of the said M. O. Crumpler or any one else have ever acquired any right whatever accruing under said contract:

Complainants further show that the Vicksburg Water Supply Company is a defunct organization and is entirely without assets or business and has ceased to be a going concern: they are informed that all of its property and other assets were on the 15th day
192 of August 1900 sold — said deed of trust:

That since the 15th day of August, 1900, it has not complied with any of the terms of said contract:

That it had no means or agencies whereby to carry out the obligations assumed by it under said contract:

That by the terms and spirit of said contract its obligation was a continuous one from day to day to provide said city and its inhabitants with water in a sufficient supply for their needs:

That as between said Vicksburg Water Supply Company and the city of Vicksburg said contract has become and is void and a nullity:

That when it permitted itself to become permanently disabled from performing the obligations of said contract and when it became utterly insolvent and bankrupt without any means or assets or without any organization as a corporation, said contract thereupon and thereby became dissolved and became a nullity:

That one, Chester R. McFarland who was formerly superintendent of the Vicksburg Water Supply Company has been nominally continued in said office to the 1st day of January 1901.

Wherefore complainants say that they are entitled as against the Vicksburg Water Supply Company to have said contract declared as having been dissolved and as being without force and effect.

Complainants further show that said mayor and aldermen were authorized and empowered by virtue of an act of the legislature approved in the — day of February 1900 to construct or cause to be constructed a system of sewerage in the city of Vicksburg at a cost not to exceed the sum of one hundred and fifty thousand dollars ($150,000).

That the health and the welfare of the inhabitants of said city demand that a system of sewerage should be constructed; that the growth and extent of its population are such as imperatively require as a condition precedent to the construction of said sewerage that said mayor and aldermen should first acquire and own a system of water works either by purchase or construction: It was manifestly contemplated by said law and by the constituted authorities of said city that said water works then owned by the said water works company might be acquired upon reasonable terms of compensation, nevertheless under the alleged contract the said water works company claims the right to demand from the city the sum of eight thousand dollars a year during the unexpired term of said contract, to-wit until the 19th day of November, 1916:

193 That since the passage of said act the said Vicksburg Water Works Company have acquired possession of said plant and are now asserting that they have succeeded to the rights of the contract made with Samuel R. Bullock & Company as aforesaid.

That under the circumstances no reasonable terms can be made between the said Vicksburg Water Works Company and said city for the purchase of said works:

That if said works were new they would not cost above the sum of one hundred and thirty thousand dollars ($130,000):

That the present plant is now about fourteen years old and has depreciated in value and efficiency accordingly:

That the present method by which water is taken from the Mississippi river and the present character of the water are such that they could not be tolerated, by the said mayor and aldermen, in case it should acquire a system of its own:

That any system which would be acquired by said city and operated for the benefit of its people would be a gross imposition upon its inhabitants and a gross dereliction of the official duties of said board if it did not provide for a supply of good and wholesome water:

That it would cost the sum of not less than fifty thousand dollars to change and improve the present water works plant in such a way as to make said plant efficient and satisfactory:

That the said Vicksburg Water Works Company will not yield its contention that it possesses a subsisting contract with said city whereby it is entitled to claim an annual payment of eight thousand dollars ($8,000) for the next sixteen years.

That in fact this pretended claims constitutes the most valuable of the alleged assets of said company: That without said plant *and* all of its property and business would not be worth the sum of one hundred thousand dollars ($100,000):

Complainants further show that the imperative duty imposed upon said mayor and aldermen by said law to make provisions for said sewerage plant, and to that end to acquire a system of water works is embar-assed and obstructed by the pretended claim of said Vicksburg Water Works Company as aforesaid.

That the said mayor and aldermen would not be warranted in exercising its rights to build a new system if it be true that they are bound to said water works company by contract requir-
194 ing a payment for the rental of the present works at eight thousand dollars per year for the next sixteen years:

That it would be a dereliction of public duty on the part of the mayor and aldermen and a gross disregard of their obligations to admit the contention of the said water works company that they are bound to it by the terms of said contract as a basis for the purchase of said plant.

That the said defendant, the said Vicksburg Water Works Company have unjustly and illegally embar-assed and obstructed the said mayor and aldermen in and about their duties as aforesaid and continue to persist and so obstruct them by said pretended and alleged claim.

Complainants aver that it is the duty of said mayor and aldermen to cause to be promptly determined the question of their liability under said contract to the said Vicksburg Water Works Company:

That they owe it to the citizens and tax payers of said city to secure for them such public utilities as a water works plant and a sewerage system upon the most economical and best terms.

That they should be free to act for the best interest of said city in the premises and rid of their alleged liability to said company.

That they are entitled to have ascertained and determined whether or not the said city is legally bound by said contract: that if it shall be determined that they are so bound, they should be free to exercise their discretion, and await the convening of the next legislature for authority to build said sewerage system, without the condition precedent that they should own the water works plant:

That the public interest and the public welfare require that there should be speedily determined the question of their said liability, if any, under said contract.

195 They are advised and charge the fact to be by reason of the facts hereinbefore averred that they are entitled as against the Vicksburg Water Supply Co., to have said contract cancelled and annulled and as against said Vicksburg Water Works Company to have a decree that said company have never acquired any rights in or to said contract or if mistaken in this by reason of the matters and things stated they are entitled to have the same annulled and cancelled. To the end that the said complainants may have the said relief as may appear just and proper: They pray that the said Vicksburg Water Supply Company, Chester R. McFarland, superintendent of the same, the Vicksburg Water Works Company and M. O. Crumpler, superintendent of same, be made parties defendant hereto and that they be subpœnaed to appear and make answer to this complaint and to abide and perform the decrees of this court:

That said Vicksburg Water Works Company and M. O. Crumpler in, said answer be required true answers to make to the following interrogatories:

Int. 1. When and how did you or either of you become the owners of the water works plant formerly owned by the Vicksburg Water Supply Company?

Int. 2. Please append to your answers copies of all contracts and deeds whereon you base your claim and title to said works and your claim to the right and privileges conferred on Samuel R. Bullock & Company their assigns and successors under an ordinance of said city approved November 19th, 1886.

Complainants will ever pray etc.,

(Signed) VOLLER & MOUNGER,
Sol's for Compl'ts.
MAGRUDER & BRYSON,
Sol's for Compl'ts.

STATE OF MISSISSIPPI, }
County of Warren. }

Personally appeared before the undersigned a justice of the peace in and for said county the within named W. L. Trowbridge, mayor of the city of Vicksburg, who being by me duly sworn says that the matters and things in the foregoing bill contained are true to the best of his knowledge and belief.

W. L. TROWBRIDGE,
Mayor City of Vicksburg.

This the 7th day of December, 1900.

JOHN W. POWELL,
[SEAL.] Justice of the Peace.

196 VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

To the Honorable H. C. Niles, judge of the United States circuit court in and for the western division of the southern district of Mississippi thereof, sitting at Vicksburg:

Your orator by way of amendment and supplemental to its original bill heretofore filed against the defendant would respectfully state that since the filing of the said original bill, to-wit, on the 16th day of February, 1901:

1st. Your orator would respectfully state that since the passage and approval of the act of the legislature entitled "An act authorizing the mayor & aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy five thousand dollars ($375,000) to purchase or construct, equip and maintain water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city hall, construct the necessary building for the hospital medical college, and for other purposes." Said act is to be found on page 180 *et seq.* of the sheet acts of the said State and in accordance with its terms and provisions a pretended election was held on the third day of July, 1900, under the authority of — a pretended resolution passed by the defendant on the question of bonding the city for said amount and purposes was pretended — submitted to the registered and qualified voters of said city under its act, which propositions were carried by a small majority of the voters, which question was in words and figures as follows, to-wit: "Be it resolved by virtue of the authority vested in the mayor & aldermen of the city of Vicksburg, by the act of the legislature of Mississippi, entitled An act to authorize the mayor and aldermen of the city of Vicksburg to issue bonds to the amount of three hundred and seventy five thousand dollars ($375,000), to purchase or construct, equip and maintain a water works system, erect and equip a city hall, construct the necessary buildings for the hospital medical college and for other purposes. Approved March 9th, 1900.

An election shall be held on the third (3) day of July on which day the question shall be submitted to the registered and qualified voters of said city whether the bonds of said city to the
197 amount of three hundred and fifty thousand ($350,000) dollars, to purchase or construct, equip and maintain a water works system, construct and establish a sewerage system to purchase grounds for, erect and equip a city shall; shall be sold and issued for the above named purposes.

Be it further resolved That twenty (20) days' notice shall be given

in the manner provided for in said act, of the date, the amount of the bonds to be issued and the purposes for which the same are issued.

The ayes and nayes being called on the motion that the said resolution be adopted, prevailed affirmatively with the following vote:

Ayes.—Homburger, Caughlin, Montgomery and Walsh.

Nayes.—Fouses, Campbell and Hayes.

Said proposition will be found contained in Minute Book H. page 444 of the records of the minutes of the defendant.

2nd. Your orator respectfully shows that the proposition submitted to the qualified electors to be voted on to bond the city contains more than one object, in fact several distinct and entirely independent propositions, which were pretended to be submitted, as a whole to the qualified voters of said city, when they should have been submitted separately unaided by any other proposition and should have been so acted upon by the board of mayor & aldermen in their authority to authorize the submission of the same to the voters, and said acts of the mayor & aldermen should have been an ordidinance and is therefore void and of no effect.

For these reasons including those already mentioned in the original bill in this cause the said bonds authorized to be issued and sold and said act and resolutions of said board of mayor & aldermen and said election are illegal, void and unauthorized and unconstitutional.

3rd. Your orator would further show as before stated in the original bill of complaint in this cause, the defendant caused its charter to be amended by the legislature of the State of Mississippi, in 1886 to provide for the erection and maintenance of a water waorks system to supply the said city with water or to contract with party or parties *to supply the said city with water or to contract with party or parties* who should build and operate water works and the city having elected to enter into a contract with S. R. Bullock & Company and assigns on the — day of November 1886, to provide defendant, the city, and inhabitants thereof with water for public and domestic purposes for thirty (30) years, at a stipulated price as agreed
198 upon by said ordinance. Therefore said city by its contract and ordinance with S. R. Bullock & Company and assigns are precluded from issuing and selling bonds to build, construct, maintain and operate a water works of its own, as provided by said legislative act and said resolution and said election of 1900; in competition with your orator against its own contract.

The premises considered your orator prays that this honorable court will enjoin the defendant from issuing and selling the said bonds for the purpose of building and constructing water works of its own in competition with your orator, and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional, and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city until the expiration of your orator's contract. And

that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and have the benefit of all the general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

Personally appeared before me L. B. Moseley, of the United States court in and for the western division of the southern district of the State of Mississippi, *I*, M. O. Crumpler, superintendent and general manager of the Vicksburg Water Works Company, and who is an authorized agent of said company — make oath that the foregoing matters and facts stated in the foregoing amended bill of complaint of *its* own knowledge are true and correct and those stated on information and belief *it* believes to be true and correct.

Witness my hand and seal of office this 23rd day of April, A. D. 1901.

L. B. MOSELEY, Clerk.
[SEAL.] C. D. BANKS, D. C.

S. S. HUDSON,
A. N. EDWARDS,
Att'ys for Complainant.

Endorsed: Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg.—Filed April 23rd, 1901. L. B. Moseley, clerk. C. D. Banks, deputy clerk. S. S. Hudson, attorney for complainant.

Your orator further shows that the said mayor & aldermen on the 30th day of April, 1901, filed a demurrer to said bill of com-
199 plaint and also on the same date a plea was filed by defendant to said bill of complaint.

On the 30th day of April, 1901, the said defendant filed an answer to said bill and on the 21st day of June, 1901 the defendant filed a motion to dissolve the injunction issued. On the 21st day of June the said defendant filed an answer to the original and supplemental bills and on the 1st day of July 1901 said defendant moved for leave to file the answer herein marked by the clerk as filed June 21st, and for leave to withdraw the demurrers and pleas heretofore filed on April 30th. All of which will more fully appear by reference to the records and proceedings in the said suit entitled Vicksburg Water Works Company *vs.* The Mayor & Aldermen of the City of Vicksburg.

That an injunction was duly granted but the bill was subsequently dismissed for the alleged want of jurisdiction, an appeal was prosecuted to the Supreme Court of the United States which was sustained—the jurisdiction sustained and cause remanded as will appear from said proceedings and opinion of the court in said case.

Your orator will further show that proof has been taken in this cause

and that the same was by order of this honorable court set down for hearing at Jackson on the — day of May, 1904,

Your orator further shows that it on December 1st 1903 by purchase, and by deed of conveyance and for a valuable consideration acquired all the right, title, and interest of the said Vicksburg Water Works Company in and to the said property described in its said bill of complaint and acquired all of its contract rights therein mentioned and particularly its contract with the said mayor & aldermen of the city of Vicksburg, and also the property set forth in said bill of complaint, and acquired the right to prosecute this suit and also acquired all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said Vicksburg Water Works Company of, in and to the property described in said bill of complaint or which it may thereafter acquire and each and every part and parcel thereof, with the appurtenances, and also that certain written contract made by and between the city of Vicksburg, Mississippi and Samuel R. Bullock & Co., dated the 18th day of November, 1886, for the rental of water hydrants for the use of the city and the supply of the inhabitants thereof with water for a period of thirty years, and acquired all the right and title of the said Vicksburg Water Works Company in and to
200 the said pending suit.

A copy of said deed of conveyance is herewith filed as Exhibit "A."

Your orator further shows that since the filing of the original and supplemental bill of said Vicksburg Water Works Company the said defendant has enacted and adopted as a part of its charter sections 3014, 3015, and 3016 of the Annotated Code of Mississippi, 1892.

Your orator further shows that it duly accepted all the obligations, conditions and terms imposed upon said S. R. Bullock & assigns by said ordinance and contract and duly notified defendant in writing on the 2nd December 1903, of its said acceptance and ownership of said contract and on the 1st December 1903, it took possession of and operated said water works plant under said deed and has been in possession and operating the same and supplying the inhabitants and defendant ever since with water in accordance with the terms and obligations of said contract which water has been accepted and used by said defendant and that your orator has complied in all respects with terms, conditions and obligations of said contract and said defendant has recognized your orator as the assignee of said contract.

Wherefore, for as much as your orator can have no adequate relief at law but only in a court of equity, where matters of this sort are cognizable and relievable and to the end that the defendant may be required to answer but not under oath (answer under oath being hereby expressly waived) each and all of the allegations hereinbefore stated, and may be required to desist the further infringement and invasion of your orator's lawful rights and may be decreed from constructing or acquiring and operating a system of water works in

competition with your orator's water works, and to the end that your orator may have such other and further relief as unto your honors may seem proper, wherefore your orator prays.

1st. That defendant may be compelled to answer the premises (not under oath).

2nd. That the defendant may be enjoined, perpetually from assuming to abrogate and take away the franchises and contract rights of complainant and from endeavoring to disable complainant from carrying on its business and to destroy its credit, and the value of its property, and to coerce said complainant to sell its water works to defendant for an inadequate price, and that defendants
201 may be enjoined and restrained from otherwise carrying on the unlawful conspiracy aforesaid entered into by it and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy and that said act of the legislature of Mississippi adopted on the 9th of March 1900 and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900 be decreed to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and to be invalid and of no effect as against your orator.

That the court decree that said contract is legal, valid and binding on defendant in every respects and that said defendant be required to execute the same in all of its provisions and refrain from any attempt to repudiate, ignore, rescind or annul said contract in any particular.

3rd. May it please your honors to grant unto your orators a writ of injunction issuing out of this honorable court under the seal thereof directed to the defendant, its officers, attorneys and servants, and each of them enjoining and restraining them from assuming to abrogate and take away the franchises and contract rights of complainant and from endeavoring to disable complainant from carrying on its business and to coerce said complainant to sell its water works to defendant for the said inadequate and arbitrary price and from otherwise carrying on the unlawful conspiracy aforesaid entered into and from doing any other illegal and unlawful act in furtherance of said unlawful conspiracy, as well as for a decree requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer.

IV. May it please your honors to grant unto your orators not only a writ of injunction, but further more a writ of *subpœna as respondendum* directed to the defendant, namely The Mayor & Aldermen of the City of Vicksburg, (corporation as aforesaid): and thereby to command them upon a day certain therein named to be and appear in this honorable court to answer the premises and to perform and abide by such further order of the court as to your honors may seem meet to the end that your orator may have full and adequate relief in the premises.

V. Your orator would further pray for a decree against defendant for all moneys due it under said ordinance with 6% interest per annum thereon from the date of their respective maturities until it is paid.

202 VI. The premises considered, your orator therefore respectfully asks this honorable court for an injunction restraining defendant from perpetuating any minutes or ordinances or resolutions of its own whereby it denies liability or seeks to annul or refuses to pay your orator contract price for water used by them as per the ordinance price and to continue to do so until this cause is heard upon its merits and that the rights of all parties concerned may be preserved.

VII. May it please your honors to further grant to your orator such other and further relief as the facts aforesaid may demand and as may be in conformity with equity and good conscience and in accord with the practice of this honorable court as a court of equity.

Your orator would further pray that this honorable court will enjoin the defendant from issuing and selling said bonds for the purpose of building and constructing water works of its own in competition with your orator and in addition thereto that this honorable court will decree said act, resolution and election to be invalid and unconstitutional and that the defendant be precluded and restrained and enjoined from constructing water works of its own in said city until the expiration of your orator's contract. That your orator be adjudged to be the owner of all of said property contracts and rights decrees orders pleadings prayers etc. of said Vicksburg Water Works Co. & be subrogated to and vested with all the rights of every kind acquired or to which said Vicksburg Water Works Co. is entitle- to in this suit. And that the defendant be required to answer this amended bill without making any oath thereto and that your orator be entitled to and have the benefit of all general and special relief as may be just and right.

And as in duty bound your orator will ever pray.

CITY WATER WORKS & LIGHT CO.,
By M. O. CRUMPLER, Sec., Treas., & M'g'r.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
For Compl'ts.

STATE OF MISSISSIPPI,
Western Division of the Southern District
of Miss., City of Vicksburg, Miss.

M. O. Crumpler of lawful age being duly sworn on his oath says that he is secretary, treasurer & general manager of the City Water Works & Light Company & that the matters & facts set forth in the foregoing bill of complaint of the City Water Works & Light

Company are true except as to such charges as are herein
203 stated to be upon information and belief & as to those he believes *that* the said charges so made to be true & further affiant saith not.

M. O. CRUMPLER.

Sworn to and subscribed before me the undersigned this 5th day of May 1904.

L. B. MOSELEY, Clerk. [SEAL.]

The above and foregoing has the following indorsement thereon to-wit:—City Water Works & Light Co. *vs.* Mayor & Aldermen of Vicksburg.—O. bill in the nature of a supplemental bill in V'burg Water Works Co. *vs.* Mayor & Aldermen of V'burg.—Filed May 5, 1904, at 11.40 o'clock a. m. L. B. Moseley, clerk.

Notice of Intention of Complainant to Press Suit and to Withdraw Petition of City Water Works & Light Company.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF VICKSBURG.

To the Mayor & Aldermen of the City of Vicksburg, Bryson and Dabney, Esqs., and W. J. Voller, Esq., attorneys of record:

You are hereby notified that we will appear before the Honorable H. C. Niles, in the Federal court room at Jackson, Mississippi, tomorrow, May 12th, 1904, at nine o'clock a. m. sharp, and respectfully request the court to hear and determine in accordance with the previous order of the court, the above entitled case upon its merits.

You are further hereby notified that we withdraw the petition of the City Water Works & Light Company filed in this cause on the 2nd day of December, 1903, and the original bill in the nature of a supplemental bill filed by the said company on the 5th day of May, 1904, and you need not answer either the said petition or the said bill.

We wish to avoid all delay and procure if possible an early determination of this controversy.

Respectfully yours,

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
204 Solicitors for the Vicksburg Water Works Co.
and City Waterworks & Light Co.

Vicksburg, Miss., May 11th, 1904.

We accept service of this notice this 11th day of May, 1903.

BRYSON & DABNEY, For Defen't.

Served by me on, and accepted by, J. C. Bryson at 12-45 p. m.

CARL FOX.

The above and foregoing has the foolowing indorsement thereon to-wit: City Water Works & Light Co. *vs.* Mayor & Aldermen of Vicksburg—Notice of motion to withdraw petition filed 2 Dec. 1903 & O. bill by way of supplemental bill on the 5th Dec. 1904.—Filed May 11/-904. L. B. Moseley, clerk, J. H. Short, D. C.

Motion of the City Water Works & Light Company to withdraw petition filed December 2nd, 1903, & original bill in the nature of a supplemental bill heretofore filed, & Vicksburg Water Works Company also ask for leave to withdraw its written consent to filing of said petition.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the City Water Work- & Light Company, and the said City Wa-re & Light Company, *and the said* moves the court for leave to withdraw from the files:

1st. Its petition filed December 2nd. 1903.

2nd. Its original bill in the nature of a supplemental bill filed *aMy* 5th, 1904, and all exhibits to said bill and petition.

Notice to opposing counsel hereto attached.

And the said Vicksburg W ter Works Co. also moves the court for leave to withdraw the written consent to the filing of said bill from the files.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Sols. for Vicksburg Water Works Co. &
City Water & Light Co.

205 The above and foregoing has the following indorsement thereon to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Motion for leave to withdraw bill etc.—Filed May 13, 1904. L. B. Moseley, clerk.

Order Allowing Motion Immediately Preceding This Order

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day came on to be heard the motion of the City Water & Light Co. to withdraw from the files it petition herein filed December 2" 1903, and its original bill in the nature of a supplemental bill filed May 5th, 1904 and all exhibits and the motion of the Vicksburg Water Works Co. to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

This May 3rd, 1904.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit: No. 41 Eq.—Vicksburg Waterworks Co. *vs.* Mayor & Aldermen of Vicksburg.—Order permitting withdrawal of petition.—Entered M. B. 2 p. 51. & filed May 14/-904.—L. B. Moseley, clerk, J. H. Short, D. C.

Complainant's Motion to Suppress Certain Interrogatories and Answers in Deposition of M. O. Crumpler.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

And now comes the said complainant and objects to the following cross-interrogatories propounded to M. O. Crumpler and his answers thereto, to-wit:

Cross-interrogatories 135, 136, 137, 138, 139, *139*, 140, 141, 142, 143, 147, and his answers thereto.

And all cross-interrogatories and the answers thereto relating to the City Water Works and Light Co. and the words, "City Water Works and Light Co." wherever they appear and moves
206 the court to suppress said interrogatories and answers and words and for causes show-:

1. That they — irrelevant and incompetent.
2. That there is no issue in the cause to which they relate.

S. S. HUDSON,
SMITH, HIRSH & LANDAU,
Soli's for Compl't.

The above and foregoing has the following indorsement thereon to-wit: No.—. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Motion to suppress certain cross-interrogatories and answers thereto in M. O. Crumpler's deposition—Filed, May 13, 1904. L. B. Moseley, clerk.

Motion of Defendant for Leave to File Supplemental Answer & for Continuance.

L. B. Moseley, Clerk United States Circuit & District Courts, Jackson, Miss.

Circuit Court of the United States for the Western Division of the Southern District of Miss.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

Now comes the defendant by its solicitors and moves the court for leave to file the following and attached supplemental answer and for a continuance with leave to take testimony to support the allegations of the said supplemental answer.

W. J. VOL–ER &
BRYSON & DABNEY,
Solicitors for Defendant.

Supplemental Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

The Supplemental Answer of the Defendant to the Bill of Complaint Hereinbefore Filed Against It.

207 Defendant respectfully shows that since the filing of the bill of complaint herein and the filing of its answer hereto, the act of the legislature of the State of Mississippi, described in the said bill of complaint, whereby the city of Vicksburg was authorized to issue bonds in the sum not exceeding $150,000 for the purpose of erecting water works of its own, or purchasing the water works plant now in existence, was, on the — day of March, 1904, repealed by the

legislature of the State of Mississippi, and the defendant now has no power or authority under said act to either erect or purchase a system of water works.

Defendant further shows that since the filing of said bill of complaint and since the filing of its answer thereto, the resolutions described in the said bill of complaint and adopted by it on the 7th day of November, 1900, whereby it denied all liability under the contract with complainant, set out in said bill, was, on the 2nd day of May, 1904, rescinded, and is now wholly inoperative and without effect, and a copy of the rescinded resolution is hereto attached as Exhibit "A."

Defendant further shows that on July 31, 1903, The Vicksburg Water Works Company, the complainant herein, executed a certain instrument of conveyance, which is herewith filed as Exhibit "B" and prayed to be taken as a part hereof, whereby it purported to convey to the City Water Works & Light Company all of its real estate and personal property, including all property of every sort whatsoever, together with the tenements, hereditaments, and appurtenances thereunto belonging, which had been acquired and were used by it in and about the performance of its functions as a water works company, in the supply of water to the city of Vicksburg and the inhabitants thereof, in accordance with the contract with said city set out in said bill of complaint.

Defendant shows that the said instrument of conveyance also purported to convey the corporate franchises, privileges, rights and liberties owned and exercised by the said Vicksburg Water Works Company, and also the contract made by and between the City of Vicksburg and Samuel R. Bullock & Company on April 16, 1886 for the rental of water hydrants for the use of said city and the supply of the inhabitants thereof for a period of thirty years.

208 Defendant shows that on December 2, 1903, the said City Water Works & Light Company filed a written notice with this defendant to the effect that the said contract entered into between Samuel R. Bullock & Company, their associates, successors and assigns, and the Board of Mayor & Aldermen of the City of Vicksburg had been assigned to the said City Water Works & Light Company, which was described as being of South Dakota, and that the said City Water Works & Light Company had accepted the terms and conditions of the contract as provided therein.

Defendant shows that in pursuance of said instrument of conveyance, the said Vicksburg Water Works Company turned over and delivered to the said City Water Works & Light Company the full and complete possession, use and control of all the property described in said instrument of conveyance, which included, as hereinbefore stated, all property of every sort whatsoever which had been acquired by it and which was used by it in and about the discharge of its duties in supplying water to the defendant and the citizens of the city of Vicksburg, whereby, defendant shows, that the said Vicksburg Water Works Company completely disabled itself from dis-

charging its corporate functions and from furnishing water to the city of Vicksburg and its inhabitants.

Defendant shows that the said Vicksburg Water Works Company is not now in the exercise of any of its corporate functions, so far as relates to the business of supplying water to the city of Vicksburg or its inhabitants, but that it has completely abandoned all of its public purposes, and is now, even if it has not been completely dissolved as to which defendant is unadvised, a corporate waif and derelict without any cause or reason for existence, and without any capacity and potentiality whatever in so far as concerns the purposes for which its charter was granted.

Defendant shows that the said Vicksburg Water Works Company is no longer interested or concerned with any of the matters concerning which rights are claimed in the bill of complaint filed by it herein, and that this court can grant no relief thereunder of which it could avail itself, or which would be of any benefit whatsoever to it.

Defendant shows that whatever may have been the rights of the said Vicksburg Water Works Company at the time it filed its bill of complaint herein, it has now, by its own act, disabled itself from further prosecuting this suit inasmuch as it has and can have no interest whatsoever in any decree which this court might or could render herein.

209 Defendant shows that the Vicksburg Water Works Company was a quasi public corporation, created under the general corporation laws of the State of Mississippi, and that it had no power or authority to execute the instrument of conveyance hereinbefore described, or to convey, deliver, and turn over to the said City Water Works & Light Company, the property therein described, whereby it completely disabled itself from performing its corporate functions.

Defendant shows that the said attempted conveyance to the said City Water Works & Light Company is null and void and that it derived no title thereto *yet* that complainant can invoke no relief against the same in a court of equity.

Defendant shows, however, that the said City Water Works & Light Company is in possession of all of said property and claims to be the owner thereof, and also of the contract with this defendant, described therein and filed with said bill of complaint and that by reason of such conveyance to it the bill filed herein has become defective for want of parties, inasmuch as it has become necessary that the said City Water Works & Light Company should be made a party to said bill of complaint.

Defendant shows that no decree which this court might make herein would be binding upon the said City Water Works & Light Company and that it would not be binding upon this defendant in any controversy which might arise between it and the said City, Water Works & Light Company.

Defendant shows that this court can make no decree for the benefit

of the said City Water Works & Light Company as it is not a party to this suit.

Defendant therefore suggests that the bill is defective for want of parties and that the said City Water Works & Light Company should be made a party complainant, as otherwise this court cannot proceed further in the premises, but must, by reason of the facts herein shown dismiss this bill.

Defendant further shows that the said Vicksburg Water Works Company, by reason of its illegal and unlawful contract with the City Water Works and Light Company, by which it has disabled itself from discharging its public duties and its functions generally as a water works company, has by its own act put itself in the attitude of a wrongdoer and for that reason is not entitled to the
210 aid of a court of equity and that as to any rights which it may have, or which — feels that it is entitled to — should be remitted to a court of law.

And now having fully answered as to all matters which hath happened since the filing of the original bill of complaint herein, defendant prays that the said bill may be dismissed and it allowed to go hence without day, together with all its costs in this behalf expended, and it will ever pray &c.

MAYOR & ALDERMEN OF THE
CITY OF VICKSBURG,
By W. J. VOLLER, &
BRYSON & DABNEY, Solicitors.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before me the undersigned, W. J. Voller, to me personally known to be the city attorney of the city of Vicksburg who made oath that the matters and things set out in the foregoing answer are true to the best of his knowledge and belief.

W. J. VOLLER,
Attorney for the Mayor & Aldermen
of the City of Vicksburg.

Subscribed and sworn to before me this 13th day of May, 1904.
L. B. MOSELEY, Clerk. [SEAL.]

EXHIBIT "A."

That "the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the, mayor & aldermen deny any liability upon any contract for the use of the water works hydrants; that from and after August 1900 they will pay a reasonable compensation for the use of said hydrants; that the city attorney shall take such action as shall be necessary to determine the rights of the city in the premises."

EXHIBIT "B."

In consideration of ten dollars cash in hand paid and for other good and lawful considerations, the Vicksburg Water Works Company, of Vicksburg, Warren county, Mississippi, hereby convey and warrant unto the City Water Works & Light Company the following described real and personal property subject, however, to all bonded indebtedness now existing against the said property,
211 belonging to the Vicksburg Water Works Company situate, lying and being in Vicksburg, in Warren county, Mississippi, to-wit:—

All square twenty-three (23), and lots one hundred and twenty-one (121) one hundred and twenty-two (122) one hundred and twenty-three (123), and one hundred and twenty-four (124) in square twenty-seven (27) and a strip of land sixty (60) feet wide lying between said squares as laid down on the Vicksburg Wharf & Land Company survey as recorded on page three sixty-two (362) of Book No. Sixty-two (62) of the records of deeds of said county, and also a strip of land sixty (60) feet wide off of the south end of lot five hundred and eight (508) in square twenty-four (24) and a strip sixty (60) feet wide off of the south end of lots five hundred and nine (509) and five hundred and ten (510) in square twenty-five (25) of the said survey, cut off by line parallel with the south lines of said squares, also that certain parcel of land in the said survey bounded and described as follows, to-wit:—Beginning at the south-west corner of lot one hundred and twenty-one (121) in said square twenty-seven (27) and running thence north thirty-one (31) degrees and thirty-six (36) minutes east along the west line of said square twenty-seven (27) and twenty-three (23) five hundred and eighty nine and nine tenths (589.9) feet to the north west corner of said square twenty-three (23) thence north sixty-nine (69) degrees and forty-four (44) minutes west, fifty and nine-tenths (50.9) feet to the center of the track of the Louisville, New Orleans, & Texas Railway Company, thence south, thirty-one (31) degrees and thirty-six (36) minutes west down the center of said track two hundred and ninety one and twenty-two one-hundredths (291.22) feet, thence north sixty-nine (69) degrees and forty-four (44) minutes west fifty and nine one-hundredths (50.09) feet to the east line of the said square twenty-four (24) thence south thirty-one (31) degrees and thirty-six (36) minutes west along said line sixty-one and eighteen one-hundredths (61.18) feet to the south-east corner of said square twenty-four (24) thence south sixty-nine (69) degrees and forty-four (44) minutes east fifty and nine one-tenths (50.9) feet to the center of said track thence south thirty-one (31) degrees and thirty-six (36) minutes west along the center of said track two hundred and thirty-seven and four-tenths (237.4) feet and thence south sixty-nine (69) degrees and forty-four (44) minutes east *and* fifty and nine-tenths (50.9) feet to the place of beginning.

212 Also a right of way and privilege of constructing a tunnel under the track and property of the Louisville, New Orleans and Texas Railway Company which track and property is now located over and through the last described parcel of land, which right of way was granted to the Vicksburg Water Supply Company by Samuel R. Bullock *et al.*, by deed of November twelfth, eighteen hundred and eighty-eight recorded in Deed Book No. Sixty-five (65) pages three hundred and ninety-five (395) and three hundred and ninety-six (396) of the records of deeds of Warren county, Mississippi. Also parts of lot- thirty-nine (39) and forty (40) in square three (3) according to the plan of James M. Searles' resurvey of Castle Hill recorded in Deed Book Fifty-nin-(59) page three hundred and thirty (330) of the record of deeds of said county, and more particularly described as follows: Commencing at the south west corner of lot forty (40) of the said square as established by the said Searles' resurvey thence along the south line of lot forty (40) two hundred and eight- (280) feet to an iron post thence north twenty-nine (29) degrees and fifteen (15) minutes west true bearing one hundred and forty-one and one half (141½) feet to an iron post on the northern line of lot thirty-nine (39) thence along said north line one hundred and eighty (180) feet to its intersection with Walnut street to an iron post, thence along the front of said lots thirty-nin- (39) and forty (40) on the east side of Walnut street one hundred (100) feet to an iron post to the point of beginning together with all water works, buildings, pump houses stand pipes reservoirs, machinery, pipes, mains, hydrants apparatus and equipment, situate in the city of Vicksburg, county of Warren and State of Mississippi and together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, tolls, rents, issues, profits, and income accruing therefrom and also all lands, tenements, hereditaments all other property whatsoever real and personal now owned or which may hereafter be acquired by said water works company. Also all and singular the corporate franchises privileges rights and liberties which the Vicksburg Water Works Company now hath and can exercise or shall hereafter acquire and possess. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said water company of, in *an* to the property above described or which may hereafter be acquired, and each and every part and parcel thereof, with
213 the appurtenances. Also that certain written contract made by and between the City of Vicksburg, Mississippi, and Samuel R. Bullock & Company dated on the eighteenth day of November eighteen hundred and eighty six, for the rental of water hydrants for the use of the city and the supply of the inhabitants thereof with water for a period of thirty *years*.

In witness whereof the Vicksburg Water Works Company caused these presents to be signed by its vice president and its corporate

seal attested by its secretary to be hereto affixed this 31st day of July, 1903.

VICKSBURG WATER WORKS COMPANY,
By ALBERT N. EDWARDS, Its Vice President.

[SEAL.]

Attest:
M. O. CRUMPLER, Secretary.

STATE OF MISSOURI, } ss:
City of St. Louis, }

This day personally appeared before me the undersigned a notary public in and for the city of St. Louis, State of Missouri, the within named Albert N. Edwards, vice president of the Vicksburg Water Works Company, who acknowledged that he signed, caused the corporate seal of the said company to be affixed and delivered the foregoing instrument as the act and deed of the said company on the day and year therein mentioned.—Given under my hand and official seal this 31st day of July, A. D. 1903.

[SEAL.]

R. L. GURNEY,
Notary Public.

My term expires Dec. 19" 1906.

STATE OF MISSISSIPPI, }
Warren County. }

This day before me, the undersigned, a notary public in and for the city of Vicksburg Mississippi personally appeared M. O. Crumpler, secretary of the Vicksburg Water Works Company, who acknowledged that he signed, affixed the corporate seal of the said company and delivered the foregoin- instrument as the act and deed of the said company on the day and year therein mentioned. Given under my hand and official seal this 3rd day of August, 1903.

[SEAL.]

WM. WAGGONER,
Notary Public.

My commission expires March 7th, 1904.

214 STATE OF MISSISSIPPI, } ss:
Warren County, }

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing instrument of writing was filed in my office for record on the 1st day of December, 1903, at 10 o'clock a. m. and recorded in Deed Book No. 101 page 414, *et seq.* Witness my hand and seal of said court this 1st day of December 1903.

J. D. LAUGHLIN, Clerk,
By J. E. GORMAN, D. C.

[SEAL.]

12—133

STATE OF MISSISSIPPI, } ss:
Warren County, }

I, J. D. Laughlin, clerk of the chancery court of said county, hereby certify that the foregoing five pages and eleven lines contain a true and correct copy of the deed from the Vicksburg Water Works Company to the City Water Works & Light Company recorded in Deed Book No. 101, page 414 *et seq.*, as the same appears on file and of record in my said office. Witness my hand and seal of said court this the 28th day of April, 1904.

J. D. LAUGHLIN, Clerk. [SEAL.]

The above and foregoing deed has the following indorsement on the back thereof: "Copy.—Vicksburg Water Company to City Water Works & Light Company. Deed"

Notice of the Assignment of Contract and the Acceptance of Its Terms and Conditions.

To the honorable Board of Mayor & Aldermen of Vicksburg, Mississippi:

GENTLEMEN: This is to notify you that the contract made and entered into between Samuel R. Bullock & Company, their associates, successors and assigns, and the Board of Mayor & Aldermen of Vicksburg, Mississippi, dated the 18th day of November, 1886, and approved the 19th day of November, 1886, whereby Samuel R. Bullock & Company their associates, successors and assigns, were to build a water works plant in the city of Vicksburg, Mississippi, and to furnish water to the city of Vicksburg, Mississippi, and its inhabitants for public and private use for a period of thirty years, has been assigned to the City Water Works & Light Company of South Dakota; and that the City Water Works & Light Company
215 accepts the terms and conditions in the said contract as provided therein this November, 28th, 1903.

CITY WATER WORKS & LIGHT COMPANY,
By R. L. GURNEY, Pres.

Filed in this office this 2nd day of Dec. 1903.

[SEAL.] W. L. TROWBRIDGE, Mayor.

The above and foregoing has the following indorsement thereon, to-wit: Vicksburg Water Works Co. *vs.* City of Vicksburg. Motion for leave to file supplemental answer and for continuance.—Filed May 13th, 1904. L. B. Moseley, clerk.

Order Over-ruling Motion for Continuance and Leave to File Supplemental Answer.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATERWORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day came on to be heard defendant's motion this day filed for leave to file the supplemental answer attached to the said motion and for a continuance with leave to take testimony in support of the allegations of the said supplemental answer and the court having heard the arguments of counsel and being advised in the premises it is considered that the said motion be and it is hereby over-ruled.

So ordered this 13th day of May 1904.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit: 41.—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg.—Order over-ruling motion to continue.—And denying leave to file amended answer. Filed as of May 13th, 1904, as per order dated Nov. 28, 1904, L. B. Moseley, clerk.—J. H. Short, D. C.

215½ Order Suppressing Testimony of M. O. Crumpler.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

This day this cause came on to be heard in accordance with the motion of complainant and defendant herein filed January 12th, 1904, and the order of the court therein rendered January 12, 1904, and thereupon the motion of complainant to suppress cross-interrogatories 135, 136, 137, 138, 139, 140, 141, 142, 143, 147 propounded to M. O. Crumpler his answers thereto and all the answers relating to the City Water Works & Light Company and the words City Water Works & Light Company wherever they appear now on file.

And the court after hearing the arguments of counsel and considered the objections of the defendant and being fully satisfied in the premises doth hereby order, adjudge and decree that said motion be and the same is hereby sustained and the said cross-interrogatories, said answers and said words be and the same are hereby suppressed and ordered stricken from the record.

This 18th day of May, 1904

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit: Equity *No.* # 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg Order suppressing testimony—Ent'd filed May 18th, 1904. Recorded M. B. 2. p. 58. Ent. M. B. # 8 folio 355. L. B. Moseley, clerk. J. H. Short, D. C.

Complainant's Evidence.

Upon the trial of this cause the following depositions were introduced in evidence on behalf of complainant.

216 Deposition of H. H. Haralson.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. —.

It is understood and agreed that the answers of Dr. H. H. Haralson, to the appended interrogatories, and cross interrogatories when made under oath before some officer authorized by the State of Mississippi, to administer oaths may be read in evidence on the hearing of the above entitled cause subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this — day of ——"

and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Att'ys for Compl't.
W. J. VOLLOR &
BRYSON & DABNEY,
Att'ys for Def't.

Interrogatories to be Propounded to Dr. H. H. Haralson.

Int. 1. State your name, age, residence and occupation?

Int. 2. If you say you are a practitioner of medicine, please state how long you have been engaged in such occupation?

Int. 3. Where have you practiced your profession?

Int. 4. Please state if you know what diseases are commonly conveyed by drinking water?

Int. 5. If you state you have practiced medicine in Scott county, Biloxi and Vicksburg Mississippi, please state if you know how the health of Vicksburg Miss. compares with other places in Mississippi as to diseases conveyed by drinking water.

Int. 6. Please state the kind of water generally used by the people for domestic purposes at each place.

Int. 7. If you say you practice medicine in Vicksburg, please state whether or not if you know the kind of water your patients use for drinking purposes?

Int. 8. If you state they use both cistern and hydrant waterworks water, state if you know which is the most wholesome water used by your patients and give your reasons, if any for so stating?

Int. 9. Please state whether, or not, your reasons for so stating are based upon water used by patients in Vicksburg prior to May, 1903.

Int. 10. Are you in any way connected with or interested with the complainant in this suit?

Int. 11. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue, in this case, or either of them or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer?

217 Cross Interrogatories.

X Interrogatory 1. State the distance as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome and fit for all purposes of domestic or manufacturing consumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution.

X Int. 5. State if it is not a fact that for the greater part of its course the Yazoo river passes over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is a fact state if it is not true that the water in Yazoo river is generally considered bad and that if it is used for drinking purposes it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a large

sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage carried by said sewer, and discharged through it into the Yazoo river, especially state if it is not a fact that nearly all of the business houses on Washington street have their waterclosets discharged into said sewer and particularly does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish Club, Elks Club, Vicksburg sana-
218 tarium, opera house, jail, St. Francis Xavier's college, city hall, and U. S. postoffice, and particularly all of the dwellings on South street from Adams street, west to Washington street drain into and discharge through said sewer.

X Int. 9. State as fully as you can the general direction of the surface drainage from the city of Vicksburg and particularly whether or not it is westward from the larger part of said city into the Yazoo and Mississippi rivers, and along such part of the same as is within two miles northward of the intakepipe of said company.

X Int. 10. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage and if you state that you have such knowledge, state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 11. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

X Int. 12. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company prior to the installation of the filter plant now in use.

X Int. 13. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 14. State as fully as you can whether all water so furnished as aforesaid since the installation of said filter plant, has been passed through said plant, and if you state that it has not state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 16. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals which had been used in filtering water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers and its odor or scent

if it had any since the installation of the filter plant, and
219 whether the same was not charged with mud, and other in-
soluble matter in excess of what it was when first taken from
the river.

X Int. 17. State any tests or examination you may have made with unfiltered water since the installation of said filter.

X Int. 18. State the quality of the water supply used by said company when it is first pumped into its basins and before the same had been treated in any way with chemicals or passed through the filter.

X Int. 19. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome, and fit for all purposes of domestic or manufacturing consumption, in its original state as it is taken from the source of supply and before it is treated in any way by chemicals or passed through the filter.

X Int. 20. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 21. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 22. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good and wholesome water, state why you have not considered the same good and wholesome.

X Int. 23. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 24. State as fully as you can to what tests or examinations you have put such water to, in its original state as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes state if you have any knowledge of the same in regard to uses not coming under *of* your tests, or examination.

X Int. 25. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the
source of supply falls short of the standard of purity above
220 mentioned, viz: "that it shall be free from all sewerage,
contamination and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular ground or quality wherein it falls short of such standard and to what extent it fails or has failed to meet the required standard.

X Int. 26. State whether said company prior to the installation of its filter, treated the said water in any way with chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

X Int. 27. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of

supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins and how long the water was permitted to remain therein before pumping the same into the mains for use by consumers.

X Int. 28. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 29. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 30. State whether or not you filtered, or in any other way treated the water supplied you by said company or any part thereof before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 31. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your readings or conversations you have ever heard of such that was or is supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen or heard of such city, town or village, give the name and location of such.

221 & 222 X Int. 32. State if it is not a fact that diseases which are produced by or result from the use of contaminated water have been more prevalent in the city of Vicksburg during the year of 1903, than formerly.

X Int. 33. If you should state that you consider the health of the city of Vicksburg good, state whether or not you consider such condition the result of the excellency of the water which is now and has heretofore been furnished by the water works company.

X Int. 34. State if there are not many other good and sufficient causes for the state of good health which prevails in the city of Vicksburg, other than the excellency of its water supply.

X Int. 35. State if you have not found the health of the people adjoining the city of Vicksburg, and beyond the limits where the Vicksburg Water Works Company supplies water as good as it is in the City of Vicksburg.

X Int. 36. Compare the health conditions which you have found in the city of Vicksburg with the condition*d* which obtain in the village of Speeds addition, in such section of said village as does not use the water from the said water works company.

X Int. 37. Compare the health conditions existing in the Fort Hill district, north of the city of Vicksburg, with the health conditions of the city of Vicksburg, and state which you have found to be the better?

X Int. 38. State if it is not a fact that there were an exceedingly large number of cases of typhoid fever in the city of Vicksburg during the spring and summer of 1903, and if you state that there was,

please state what you consider to have been the cause of such conditions.

W. J. VOLLOR &
BRYSON & DABNEY, For Deft.

223 Answers of Dr. Hugh H. Haralson, to the interrogatories and cross interrogatories propounded to him in the case of Vicksburg Water Works Company *v.* Mayor and Aldermen of Vicksburg.

Answer to interrogatory 1. Hugh H. Haralson, age forty-nine years, residence Vicksburg, Mississippi, occupation practitioner of medicine.

Ans. Int. 2. I have been engaged in the practice of medicine twenty four years.

Ans. Int. 3. I have practiced my profession in Scott county, at Biloxi, in Harrison county, and at Vicksburg in Warren county, all of Mississippi.

Ans. Int. 4. Only two diseases are commonly conveyed by dringing water, viz: simple diarrhea and typhoid fever.

Ans. Int. 5. I practiced in Scott county seventeen years, at Biloxi two years, and in Vicksburg five years. According to my observation the diseases conveyed by drinkmg water were of more frequent occurrence in Scott county and Biloxi than in Vicksburg.

Ans. Int. 6. The kind of water generally used in Scott county is cistern water and well water; in Biloxi artesian water, and shallow well water; in Vicksburg cistern and hydrant water works water.

Ans. Int. 7. In Vicksburg my patrons drink cistern water and hydrant water works water.

Ans. Int. 8. I consider the hydrant waterworks water by far the most wholesome water used by my patrons in Vicksburg. My reason for so stating is because the diseases more commonly conveyed by drinking water are of more frequent occurrence among those of my patrons using cistern water than among those using hydrant waterworks water.

Ans. Int. 9. Since I have been in Vicksburg covering a period of a little more than five years, I have never had a case of typhoia fever among those of my patrons who use hydrant watrrworks water, but I have had fifty or more cases of typhoid fever during this time, among those of my patrons who use cistern water. According to this record, the hydrant waterworks water was as wholesome befote as it has been since May, 1903.

Ans. Int. 10. I am in no way connected with or interested with the complainant in this suit.

Ans. Int. 11. While the question of water supply in general has been extensively studied, there is much yet to be learned
224 concerning it. Public water supply is always obtained from one of two sources, viz: surface water or well water. By sur-

face water is meant all collections of water in free contact with the atmosphere, whether in motion or at rest. This includes everything from the smallest pool to the largest lake and from the narrowest rivulet to the broadest river. This being the case, it is quite evident that a vast majority of towns and cities must obtain their water supply from surface water. Should we admit, which we do not, that we ought not to use it, we will find practically that we must. I am one of those who believe that the Mississippi River water is the most wholesome water in the world. There are physical reasons, which will be set forth later why an artesian well water supply cannot compare with the Mississippi river in point of healthfulness or wholesomeness. It is a fact well known to the medical profession although possibly not so well known to the laity, that aside from simple diarrhea, the principle disease conveyed by water in civilized communities is typhoid fever. While this disease is thought to be due to a specific bacillus, which has been isolated and recognized time and again, it is a well known fact that this bacillus is rarely found in water even known to be contaminated. While the water supply of the city of Philadelphia is constantly propagating typhoid fever, her bacteriologists state that they have never been able to detect in her water supply a bacillus which they could clearly identify as the typhoid bacillus.

Should a condition of typhoid contamination arise in well water whether deep or shallow, or in surface water at rest, it would probably be permanent and constant, and in consequence be a standing menace to the health of the community. But in moving surface water, such as the Mississippi river, on account of the various conditions disturbing organic life in the water, it would not be permanent and constant, and in consequence it would not be a standing menace to the health of the community.

Underground cistern water in any town or city that permits cess pools and privy sinks cannot be otherwise than a standing menace to the health of that city. The danger from this source increases in proportion to the increase of its population, cess pools and sinks. It is a condition that will continue even after the cesspools and privy sinks have been discontinued, because the earth is literally saturated with human excrement which may for years find its way into some nearby cistern. In a city the size of Vicksburg no underground
225 cisterns or wells should be allowed for drinking purposes.

When a running stream has been polluted by sewerage a process of self purification occurs by sedimentation, by the action of bacteria and of microzoa which feed upon the organic matters. The rapidity and completeness by which this natural purifying process goes on depends upon the amount of dilution of the sewerage, the presence or absence of fine particles of clay which produce sedimentation, and especially on the amount of oxygen present in the water, which determines the character of the bacteria which flourish in it. If there is an abundance of oxygen, those bacteria which require it for their growth will multiply and consume the organic

matter to the exclusion of other forms. Such bacteria are called aerobic, that is, air loving bacteria, and among these are nitrifying organisms, which organisms are the best natural means of purifying the water. It will be seen that the conditions here set forth are possibly more completely present in the Mississippi River water, such as we have, than any other body of water in the world, and are certainly more completely absent in cistern water, deep or shallow well water, and surface water when at rest.

But in arriving at a conclusion as to the purity or impurity of a water supply, we cannot rely entirely upon the chemist and bacteriologist. We must consider mainly the sanitary effect upon the individuals of the community. As I have already stated, it is a well known fact that practically the only diseases produced by drinking are simple diarrhea and typhoid fever, the latter being, if not the more common, the much more serious. Before condemning the Mississippi river as a wholesome water supply we should consider the history of this disease, especially as to place. It is a well known fact that the most malignant cases of typhoid fever and the most violent epidemics of this disease occur in mountain regions, where the water supply is obtained from sparkling wells and springs. When we come to our own State we find that typhoid fever prevails much more extensively in the pine regions where well water is used, than in the western section along the course of the Mississippi where the supply is obtained from that stream. Since my residence in the city of Vicksburg, extending over a period of more than five years, I have seen more than fifty cases of typhoid fever. Without a single solitary exception all of these cases used water from cisterns, and only used both hydrant waterworks water and cistern water.

226 We could not ask for better evidence that our water supply is not polluted than that we have not now nor have we ever had an epidemic of typhoid fever.

More than fifteen years of my professional life was spent in the eastern portion of the State, where the communities obtain their water supply from cisterns and wells. During that time I am sure that I treated from twenty-five to one hundred cases of typhoid fever annually. In one community that used well water exclusively, I had on hand at one time twenty-five cases of typhoid fever. Coming from that section to this, I was deeply impressed by the contract and could attribute it to no other cause save the wholesomeness of Vicksburg's water supply.

If this water did not produce disease before its impurities, if it had any, were removed by filtration, it certainly will not produce disease now.

227 Ans. X Int. 1. I would judge it to be about three fourths of a mile.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I cannot.

Ans. X Int. 4. I cannot.

Ans. X Int. 5. My impression is that the greater part of the Yazoo

river passes through a delta country, but it is not true that the waters of the Yazoo, nor any other water, produces malarial diseases.

Ans. X Int. 6. My information is that a sewer for storm water runs for some distance under Washington street in the city of Vicksburg, and that it empties into the Yazoo river some two miles north of the intake pipe of the water works company.

Ans. X Int. 7. I have no information on this question.

Ans. X Int. 8. My information is that this sewer under Washington street was intended solely for storm water and is constructed of brick. This being the case, I would not suppose that the city of Vicksburg would allow offal and excrement from watercloset and from other sources to enter it at all.

Ans. X Int. 9. The general direction of the surface drainage of the city of Vicksburg is westward for the larger part of the said city and is within two miles of the intake pipe of the waterworks company.

Ans. X Int. 10. I have no knowledge of the extent of the contamination of the water of the Yazoo river by sewerage.

Ans. X Int. 11. I have observed the course of the cater leaving the Yazoo canal, and entering the Mississippi river, and my opinion is that very little, if any, of that water is taken and used by the waterworks company.

Ans. X Int. 12. The character and quality of the water as to wholesomeness prior to the installation of the filter plant, I can only judge by its sanitary effect upon my patrons, which was the same as it is now, and that effect goes to show that it was a wholesome and healthful water.

Ans. X Int. 13. The wholesomeness of the water since the installation of the filter plant, is all that could be desired by and reasonable community.

Ans. X Int. 14. I judge it was, since it comes to me in as good condition as I could desire.

Ans. X Int. 15. I do not know.

228 Ans. X Int. 16. I do not understand the question. The water since the installation of the filtering plant has, as a rule, come to me clear and sparkling, without any odor or scent, and only a few times has it appeared a little cloudy; never, from my hydrant, have I observed it muddy. I have never observed that the water has been contaminated with any chemicals.

Ans. X Int. 17. I have made none.

Ans. X Int. 18. I have made no tests and have already answered as to the quality of its wholesomeness.

Ans. X Int. 19. I think it is.

Ans. X Int. 20. ——.

Ans. X Int. 21. ——.

Ans. X Int. 22. ——.

Ans. X Int. 23. ——.

Ans. X Int. 24. I have made no chemical or bacteriological tests

of this water; but my observation as to its use with my patrons is that it is wholesome for all domestic purposes.

Ans. X Int. 25. ——.

Ans. X Int. 26. I do not know.

Ans. X Int. 27. I do not know.

Ans. X Int. 28. I do not know that it was allowed to remain in settling basins.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. Up to the time of the installation of the filter plant I always filtered my drinking water, whether it came from the hydrant or the cistern. I did this as an additional precaution against diseases conveyed by drinking water. Since the installation of that plant, I have discarded my cistern water entirely, for drinking purposes, and have ceased to filter the hydrant water.

Ans. X Int. 31. Every town on the Mississippi river that gets its water supply from that stream takes it from a point below every other town above it. As to whether their intake pipes enter the stream below or above the sewer outlets, I do not know. I have read, however the following statement made by Thomas M. Koon, M. D. health officer of Grand Rapids Michigan.

"Grand Rapids is a city where typhoid fever is endemic. In looking over the records for the ten years from 1892 to 1902, inclusive, I find that during that period typhoid has been reported
229 to the board of health every month except thirty-three. During that period there have been three hundred and eighteen deaths with nine thousand nine hundred and eight cases reported. In case all of the typhoid fever was reported, our death rate would be about seventeen per cent. Rather than accept that, we will allow our physicians to go on record as being negligent in reporting their cases. Allowing a death rate of ten per cent. we have had three thousand, one hundred and eighty cases, an average of three hundred and eighteen per year, with an average death rate of thirty-one and eight-tenths per cent. The death rate from all diseases in Grand Rapids from all diseases is lower than the average city of its class. From typhoid fever it is much higher. It is clearly evident that something is radically wrong. The public water supply for our city is taken from the Grand river. Above the intake pipe are several large factories, and the Michigan Soldiers' Home, all of which pour their sewerage in to the river. The river water is not filtered in any wat. It has been customary to point to Grand River water as the chief cause of typhoid fever in Grand Rapids. During the past summer our board of health has been collecting data in regard to the water supply of our city. From a careful canvass made of our entire city, five thousand nine hundred and sixty-nine wells were listed, five thousand five hundred and thirty five of which were in use supplying about sixty thousand people. Therefore, the majority of our people are drinking well water. The remaining thirty-five thousand of our people use bottled spring water or Grand River water. There are six thousand, three hundred privy vaults in

our city. Six thousand three hundred privy vaults scattered among five thousand five hundred and thirty-five wells certainly invite contamination of the drinking water. Out of sixty four cases of typhoid fever investigated, during the past fall, we found that fifty five were drinking well water. The city bacteriologist reported only five of the wells fit for use. As you will see, our city is honey-combed with vaults and cess pools. There can be no doubt but what the soil is being constantly polluted. The well water naturally must be unfit for use. This undoubtedly accounts for the larger part of our typhoid fever."

The foregoing quotation is taken from a paper read by Thomas M. Koon, M. D., health officer of Grand Rapids, Michigan, at the seventh general conference of health officials, Ann Arbor, Michigan, Jan. 9th, 1904, and published in the Michigan Monthly Bulletin of Vital Statistics of December, 1903, which is published at Lansing, Mich. by the State board of health with the co-operation of the Department of State.

Ans. — Int. 32. There has been more typhoid fever in Vicksburg during the year 1903 in my practice than during any other year since my residence in this city; but not a single case of this disease has occurred with any patron of mine who used hydrant waterworks water exclusively.

Ans. X Int. 33. I do consider Vicksburg a healthful city, and I do think that the absence of diseases in this city commonly conveyed by drinking water, — the result of the excellency of the water which is now and has heretofore been furnished by the waterworks company.

Ans. X Int. 34. As to the diseases caused by drinking water, there can be no other cause for the good health of the city of Vicksburg than the excellency of the water supply. So far as relates to other diseases, there are other reasons for the good health of the city.

Ans. X Int. 35. I think not in every particular.

Ans. X Int. 36. I cannot draw this comparison, since I do not know the limit of the water supply.

Ans. X Int. 37. I do not think the health condition of the district north of the city of Vicksburg are as good as in the city of Vicksburg.

Ans. X Int. 38. There were a number of cases of typhoid fever in Vicksburg during the summer and spring of 1903. I can base my opinion only on my individual observation and experience. We know that typhoid fever is usually conveyed by drinking water; I know that every case of typhoid fever coming under my observation used cistern water to the exclusion of hydrant water works water, except one. This patient used both cistern and hydrant waterworks water. From this, I can only conclude that the cause of such condition is the impure cistern water.

H. H. HARALSON.

Sworn to and susbcribed before me, this 23 day of February, A. D. 1904.

J. H. SHORT,
Notary Public. [SEAL.]

The above and foregoing has the following indorsement thereon, to-wit: 41. Equity—Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of Vicksburg. Deposition of H. H. Harralson. Filed Fe'y 29, '04. L. B. Mosely, clerk. J. H. Short, D. C.

231 Interrogatories and Cross-interrogatories Propounded to T. C. Thomas.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. —.

It is understood and agreed that the answers of T. C. Thomas to the appended interrogatories and cross interrogatories when made under oath before some officer authorized by the State of Mississippi to administer oaths may be read in evidence on the hearing of the above entitled cause subject only to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the depositions shall be conclusive evidence of his authority to administer oaths and formal captions and certificate of such officer *is* expressly waived and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this -- day of ——" and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.
W. J. VOLLER &
BRYSON & DABNEY,
Attorneys for Defendant.

Interrogatories to be Propounded to Capt. T. C. Thomas.

Int. 1. State your name, age, residence and occupation.

Int. 2. If you state that you are captain of the Corps of Engineers of the United States, please state if you know when the United States Government first opened up what is known as the Yazoo canal by which the waters of the Yazoo river flow through the same.

Int. 3. If you can, please describe the course of this canal with reference to the city of Vicksburg, and if you have a map of the same showing the construction and course of the canal please file the same herewith to your deposition and mark it Exhibit "A."

Int. 4. Please state, whether, or not, there is an underground gutter emptying into said canal within the city of Vicksburg and if so, at what point does it empty into said canal and indicate the point on the map filed with your deposition; and state if you know what it discharges and what is it used for.

232 Int. 5. Please state if you know the location and distance of the pumping station and intake pipes of the water works company with reference to the outlet of the underground gutter above mentioned and indicate the same on the map if you can?

Int. 6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

233 Cross-interrogatories.

X interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing concumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution?

X Int. 5. State if it is not a fact that for the greater part of its course, the Yazoo river does not pass over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered bad, and that if it is used for drinking purposes, it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the waterworks company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage carried

by said sewer, and discharged through it into the Yazoo river,
234 especially state if it is not a fact that nearly all of the business houses on Washington street have their water closets discharged into said sewer and particularly, does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish club, Elks' club, Opera house, jail, St. Francis Xavier's college, Vicksburg sanatarium, city hall, and U. S. postoffice, and practically all of the dwellings on South street from Adams street west to Washington street, drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and if before state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the waterworks in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully as you can the general direction of the surface drainage from the city of Vicksburg, and particularly whether or not it is westward from the larger part of said city into the Yazoo river and Mississippi river, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you have such knowledge state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

235 X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant now in *use*.

X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state that it has not, state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals before being passed through the filter.

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals, which had been

used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor and scent if it had any, since the installation of the filter plant, and whether the same was not charged with mud, and other insouble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company when it is first pumped into its basins by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit for
236 all purposes of domestic or manufacturing consumption in its original state, as it is taken from the source of supply, and before it is treated in any way by chemicals or passed through the filter.

X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 24. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examination.

X Int. 28. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz. "that it shall be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular quality or ground wherein it falls short of such standard, and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company, prior to the installation of its filter treated the said water in any way by chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

237 X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins, and how long the water was permitted to remain therein before pumping the same into the mains for the use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered, or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation, you have ever heard of such that was supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen or heard of such city, town or village, give the name and location of such.

X Int. 35. State, if you know, anything of the plant, that is, machinery, ways, means and appliances used by said water works company, in obtaining a supply of water and distributing the same to its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply and putting the same into its settling basins,

238 what is the size and number of lines of pipe in use by said company, from its pumphouse to the Mississippi river, what is the number and size of the engine used in lifting or pumping water from the said Mississippi river into the settling basins of said company, what is the capacity per day for taking water from the said Mississippi river, and putting the same into the settling basins now in use by said company, does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be moved or shifted as the said river rises or falls, and if you say it does, state what rise or fall of said river requires the same to be so shifted and state the time required for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in lifting its water from the river and supplying the same in its basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

Letter from T. C. Thomas.

UNITED STATES ENGINEER OFFICE,
VICKSBURG, MISSISSIPPI, February 15, 1904.

Mr. Joseph H. Short, U. S. commissioner, Vicksburg, Miss.

SIR: I return herewith a paper left at this office by you the 12th instant.

The work of improving the mouth of the Yazoo river and harbor at Vicksburg, Miss., is carried on under the direction of the Secretary of War and supervision of the Chief of Engineers, U. S. Army, by Captain Chas. S. Bromwell, corps of engineers, stationed at New Orleans, Louisiana.

239 I am a civilian employee and am forbidden to furnish any information from the records of this office, which, under the regulations may be obtained only from the proper officers of the War Department.

Very respectfully,

T. C. THOMAS,
Ass't Engineer.

(1 enclosure.)

Mo. Yazoo 133.

I, J. H. Short, a notary public in and for the city of Vicksburg, Warren county, Miss. hereby certify that the foregoing letter was delivered to me in person by said T. C. Thomas.

[SEAL.]

J. H. SHORT,
Notary Public.

Feb'y 29/04.

The above and foregoing has the following indorsement thereon, towit: No. 41 Equirty. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Interrogatories and cross-interrogatories propounded to T. C. Thomas—unanswered—Filed Feb'y 29/04. L. B. Moseley, clerk. J. H. Short, D. C.—S. S. Hudson, attorney at law, Vicksburg, Miss.

240 Deposition of Abraham L. Metz.

In the Circuit Court of the United States *in* the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed and understood that the answers of A. L. Metz to the appended interrogatories and cross-interrogatories when made under oath, before some officer authorized in the State of Louisiana to ad-

minister oaths, may be read on the hearing of the above entitled case in evidence, subject only to objections for irrelevancy and incompetency. Notice, commission and all matters of form are hereby expressly waived. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal caption and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if in the following form: "Sworn to and subscribed before me this — day of ——" and signed by the officer, with dates properly filled in.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Solicitors for Complainants.

W. J. VOLLOR AND
MAGRUDER, BRYSON & DABNEY,
Solicitors for Defendants.

241 Interrogatory No. 1. Please state your name, age, residence, and occupation.

Int. 2. If you say you are a chemist, please state how long you have been a chemist.

Int. 3. To give the court an idea of the extent of your information please state what opportunities and experience, if any, you have had in analysis and examination for determining the wholesomeness of waters.

Int. 4. Please state whether or not you came to Vicksburg on the 23d. day of April, 1903, and if so, at whose instance, did you come and in what capacity?

Int. 5. If you say you came at the instance of the Vicksburg Water Works Company to analyze the Mississippi River water, at Vicksburg, please state what you did and give the result of your analyses of water, both in the popular and in technical language as to its wholesomeness, and fitness for manufacturing purposes, and file with your answee hereto an analysis of the same as made by you.

Int. 6. Did you make any other analysis of any other waters while you were here, and if so, state where you got the water and give the result of your analysis.

Int. 7. Please state which of the two waters analyzed by you was the most wholesome in your opinion.

Int. 8. Please state whether or not you have ever made any analysis of water of the Mississippi river at any other point than Vicksburg with a view of determining its wholesomeness; and if so what was the result of your examination.

Int. 9. Do you know of your own knowledge what reputation the Mississippi River water has for healthfulness or wholesomeness as used on ships and vessels?

Int. 10. If you have answered the preceding interrogatory in the affirmative, please state fully the sources and extent of your knowledge and information and also state what that reputation is

Int. 11. Are you familiar with the recognized authorities on the subject of the wholesomeness of water? If so, please state the standard of wholesomeness recognized by such authorities and furnish for comparison reliable abstract from the official reports or writing- from such recognized authorities.

242 Int. 12. If you know, please state what kind of a stream is the Mississippi river.

Int. 13. What was the relative difference, if any, between the amounts of suspended matter and organic nitrogenous matter and bacteria in the samples of water taken by you in midstream, at the intake pipe, from the settling or storage basin, and the hydrant in the city.

Int. 14. If you say there was a difference, please state fully what that difference was, its extent, and its cause.

Int. 15. What effect, if any, does the suspended matter have upon the human stomach?

Int. 16. State anything else you may know of interest to either party in this suit.

Int. 17. The complainant has in operation what is known as the "Jewel filtration process," by which it clarifies and purifies its water now delivered to the city. Please state if you know whether or not this process was in operation when you were here collecting samples of water?

243 Cross-interrogatories.

X interrogatory 1. If you should state in answer to the direct interrogatories that you have analyzed samples of water taken fro either the basin at the water works ppant, or from any of the pipes on the line of mains of the Vicksburg Water Works Company state whether or not you were present when such samples of water were taken from said basin or from said mains, and if not, state how you came into possession of the water analyzed by you.

X Int. 2. State from what point or points on the mains your samples of water were obtained.

X Int. 3. State whether the filtration plant now in use by the company was in operation at the time your samples were obtained.

X Int. 4. State, if you know, whether the samples analyzed by you were of the same quality as that usually furnishee to the mayor & aldermen of the city of Vicksburg, and the inhabitants of said city.

X Int. 5. State, if you know, whether the Vicksburg Water Works Company puts any chemicals or other foreign substance of any kind into the supply of water *maftee* the same has been taken from the Mississippi river, or other sources before pumping such water into its mains for the use of its consumers, and if you state that said water company does put such chemicals or other foreign substances into its supply of water, state what such chemicals or substance so

used is, and state its effect or chemical reaction upon the water, or upon any impurities that may be in the same.

X Int. 6. State whether or not your consider the water used by said company and delivered by it through its mains to the mayor and aldermen of the city of Vicksburg, and to the inhabitants of said city good and wholesome, and if you state that you so consider it state whether or not you consider -he said water good and wholesome as it is taken from the source of supply and before it is treated with chemicals and before it is passed through the filtration plant, and if you stat- that you do not, give your reasons for so stating.

X Int. 7. State, if you know, the source of supply of water
244 used by the said company, particularly whether or not the water used by the said water works company, and supplied to the said mayor & aldermen of the city of Vicksburg, and the inhabitants of said city is obtained from the Mississippi river or not and if you state that it is so obtained, state, if you know, whether or not any part of the same is from water discharged from the Yazoo river.

X Int. 8. State, if you know, whether or not the said supply of water above mentioned is in any way contaminated, or polluted by sewerage matter or other effete matter or offal from the city of Vicksburg.

X Int. 9. State whether or not you have analyzed any water taken from the Yazoo river, in front of the city of Vicksburg, before the water passed the intake pipe of said water works company, but within a mile of said intake pipe, and if you state that you have, state the quality of the same, and whether or not you found any sewerage pollution in the said waters.

X Int. 10. State whether or not you have analyzed any water taken from the Mississippi river at or near the point from which the supply of water taken and used by the Vicksburg Water Works Company is obtained, and if you state that you have give the analysis of the same, and state whether or not you consider it good and wholesome.

X Int. 11. If you state that any of the water from the Vicksburg Water Works Company analyzed by you was not good and wholesome, state the purposes for which you would say it is not good and state your reasons for saying that it is not wholesome.

X Int. 12. State, if you know, whether or not all the water supplied and furnished by the Vicksburg Water Works Company, either to the mayor & aldermen of the city of Vicksburg, or to the inhabitants of said city is treated and passed through the Vicksburg water works filter, the same as the water analyzed by you was treated and filtered, and if you state that you do not know, state whether or not you can say that the water usually furnished by said com-any to said mayor & aldermen and to the inhabitants of said city of Vicksburg, is of the same quality as that analyzed by you, and if you cannot say that it is, state whether you know as a matter
245 of fact whether the water usually and ordinarily furnished by the Vicksburg water works to the said mayor and alder-

men of the city of Vicksburg, and the inhabitants of said city is good and wholesome.

X Int. 13. State whether or not you analyzed any water from said water works mains or hydrants prior to the installation of the filtration plant now in use by said company, and if you state that you did, give the analysis of the same.

X Int. 14. If you have analyzed any samples of water taken from the basins of said company before the same had passed through the filtration plant give the analysis of same.

X Int. 15. If you have used the expression "good and wholesome" in your answer to any of the above interrogatories, state the exact meaning or definition of the said term or expression as used and understood by you.

X Int. 16. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

246 Answers to Interrogatories.

Interrogatory No. 1. Abraham L. Metz, 39 years, No. 9 Rosa park, New Orleans, La. Professor of chemistry medical dep'r't Tulane University, of La. Official chemist, city of New Orleans, La.

Int. 2. Have been following the profession of chemistry since my graduation in 1887, or a period of seventeen years.

Int. 3. I have been connected with the medical dep't Tulane University of La. since 1887 as follows: From 1887 to 1893, as demonstrator of pharmacy; from 1893 to 1896, as demonstrator of chemistry; from 1896 to date, as professor of chemistry; from 1889 to 1901, as chemist to the board of health, State of Louisiana, from 1899 to 1901, as chemist to the board of health, city of New Orleans; from 1890 to date as official chemist, city of New Orleans.

During my connection with the health boards above mentioned, and as official chemist of the city of New Orleans, I have had frequent occasions to examine and analyze water and water supplies in my official capacity.

Int. 4. I went to Vicksburg as an expert on water matters. I was in Vicksburg April 23d, 1903. I went to Vicksburg by request of Mr. M. O. Crumpler, treas., and manager of the Vicksburg Water Works Co.

Int. 5. On my arrival in Vicksburg, I reported to Mr. Crumpler, and requested him to place at my disposal a man, or men, who would be under my supervision and direction, so that I would have every facility to personally collect samples of water from *such* place or places as I deemed requisite to the investigation of the water supply of Vicksburg. I would not accept waters which were tendered me, but insisted that I collect the water, for then only would I be in a position to give an opinion of facts as I found them

Samples of river water were collected by me from midstream; from the intake pipe of the Vicksburg Water Works Co., from the storage basi- of the V. W. W. Co. and from a hydrant at Bazinski's stable.

The samples of water from these places were collected by me in duplicare, one sample of each collection for sanitary analuses, and one sample for bacteriological examination. The cultures for the bacteriological examination of the various samples of water (collected by me) were put to culture or growth on media, in Vicksburg and carried by me from Vicksburg to this city for further examination.

The various samples of water for sanitary analyses were collected by me corked, and the cork tied and knotted in a peculiar manner by me, and shipped by express to this city. On the arrival of the sample here, I examined the knots to ascretain whether or not they had been tampered with; finding they had not been disturbed, I proceeded with the examination, with the following results:

Tabulated Report of Sanitary Analyses of Mississippi River Water Collected at Vicksburg April 23d, 1903.

Results expressed in parts per 1,000,000 constituents.	Water taken from midstream.	Water taken at intake pipe, V. W. W. Co.	Water taken from storage basin, V. W. W. Co.	Water taken from hydrant, Bazinski's stable.	Cistern water from residence of Mr. McCabe.
Suspended matter	185.000	200.000	21.300	31.540	0.000
Dissolved matter	189.000	187.960	189.640	184.030	3.6000
Oxygen consumed	2.300	2.500	1.300	1.800	0.700
Chlorine as chlorides	8.000	8.000	8.000	8.000	1.500
Nitrogen as albuminoid ammonia	0.120	0.135	0.040	0.150	0.063
Nitrogen as free-ammonia	0.009	0.010	0.009	0.100	0.020
Nitrogen as nitrites	0.000	0.000	0.000	0.000	0.000
Nitrogen as nitrates	0.050	0.055	0.042	0.100	0.120
Number of bacteria per cubic centimetre	150.	186.	65.	108.	295.
No. bacilli coli communis	were found in any of the above waters.				

247 For the proper understanding of the analyses, I respectfully offer the following explanations.

All results are expressed in parts per 1,000,000, as recommended by the American Public Health Association.

Oxygen consumed.—This determination is considered to be a measure of the amount of carbonaceous organic matter contained in the water, and is in no sence a measure of the nitrogen content.

Nitrogen as albumenoid ammonia.—This determination is a mea--re of the amount of nitrogenous (albumenoidal) organic matter.

Nitrogen as free am-onia.—When the water is distilled, with a small quantity of sodium carbonate, a certain amount of am-onia is carried over with the distillate. This is called free am-onia, and is a measure of the amount of nitrogen in the form of ammonia which has been set free by the decomposition of the albumenoidal material through the action of bacteria and air.

Nitrogen as nitrites.—This shows a further step in the decomposition of the nitrogenous matter, and is indic-tive of the amount of nitrogen which has reached, or, is passing through the second stage of the process of oxidation.

Nitrogen as nitrites.—This indicates the amount of complete-y oxidized mineral nitrogen, *i. e.* which has passed from albumenoid form into mineral nitrates.

Chlorine as chlorides.—This element is present in water chiefly as common salt. In certain sections and localities, the amount of chlorine is a measure of sewage contamination.

The water supplied to the people of Vicksburg should be compared with the water taken from midstream taken as a standard.

It is my opinion that the water taken at Vicksburg April 23d, 1903, will compare favorably with the most critical standards laid down by various authorities on water supplies.

Int. 6. I did. I obtained a sample of water from the underground cistern on the premises of Mr. McCabe. The analysis is given on page two of these interrogatories. It will be found in column five.

Int. 7. From the standpoint of the sanitary analysis, they are about equal so far as wholesomeness is concerned. From the standpoint of a bacteriological comparison, the river water is far superior to the underground cistern water. Note that the number of bacteria is nearly 100 % more in the underground cistern water than in the river water taken from midstream.

248 Int. 8. I have made numerous examinations, and analyses of the *of the* Mississippi River water, as furnished to the people of New Orleans. These analyses were made from various sources at different points on the river front, and from hydrants in different sections of the city. I have always found the water wholesome, except when contaminated by local conditions and sources. As soon as the pollution was stopped, the water after a few days would assume its own degree of purity. The only objection that can be made to an unpolluted Mississippi River water is the silt it holds in suspension.

Int. 9. I know from personal observation with captains aboard ship, and from personal observation that preference is given Mississippi River water for use aboard ship. It is said that the water does not undergo the stage of putrefaction, which is common to other waters.

Int. 10. Answered in the preceding question.

Int. 11. I am acquainted with the writings of most of the recog-

nized authorities on the subject of the wholesomeness of water. Prof. A. B. Leeds, in his report to the water department of the city of Wilmington, for 1882, which statement is the outcome of his experience in the analyses of American waters, says: I would venture to propose as an aid in determining whether a water supply derived (as most of our American city water supplies are) from a flowing stream is good and wholesome, the following highest limits as a standard of purity.

Albumenoid ammonia.....	0.100 to 0.280 per million.
Free ammonia.....	0.000 to 0.120 " "

Wanklyn's standard- of organic purity are as follows:

"Class 1. Water of extraordinary purity, yielding from 0.000 up to 0.050 part of albumenoid ammonia per 1,000,000. This class comprises the most carefully distilled waters and highly filtered waters, both natural and artificial. Occasionally a river water in its unfiltered condition falls into this class."

Class 2. Comprehends the general drinking waters. It gives from 0.050 to 0.100 per 1,000,000. Any water falling fairly into this class is safe organically."

Class 3. Comprehends the dirty waters, and is characterized by yielding more than 0.100 parts of albumenoid ammonia per 1,000,000.

These figures are quoted by many authorities. I must say that they are exceptional figures, as I have seen waters which were thoroughly good for dietetic purposes, which yielded much larger results than what the standards laid down by these authorities call for.

You will note, however, the analyses of the Vicksburg water, can be well judged by these very critical standards.

Other authorities who come to the same conclusions may be mentioned:

Mason, Water Supply, Chemical and Sanitary.
Harrington, Practical Hygiene.
Notter: Treatise on Hygiene.
Thresh: Water Supplies.
Parkes. Hygiene.

I could catalog a library which deals with this all important subject. Regarding the value of nitrites and nitrates in determining the potability of water, I quote from Parkes' Hygiene, p. 709, 8th edition. "Nitrites indicate the presence of organic matter undergoind change, it is either a stage of direct oxidation of such matter, progressive or arrested or a retrogression from the form of nitrates in consequence of the latter yielding up its oxygen. Pure water ought to be quite free from nitrites, and ought to show only traces of nitrates,—the limit being about 0.320 per 1,000.000. In this connection I would state that the Mississippi River water contains nitrates as a natural constituent of the water. The water taken from midstream contains nitrates, but in very small proportions nor is this

to — wondered at for the simple reason that it is common to
249 find nitrates in all soils especially sands, gravels and ferruginous clays. These substances form the silt and clay found in the suspended matter of the Mississippi River water.

Int. 12. The Mississippi river is a silt bearing stream.

Int. 13. There is quite a decided difference between the amounts of suspended matter in the different samples examined. The water taken from midstream and the intake pipe of the supply plant contains from six to nine times as much suspended matter as does the water taken from storage basin and Bazinski's hydrant. The number of bacteria show a decrease in the storage water, and hydrant water

Int. 14. The tabulated report will show the difference at a glance. A comparison will show that about 88.44 per cent. of the suspended matter has been removed by subsidence. The decrease of bacteria is accounted for by the fact that the suspended matter attracts the grea-er part of the organic matter contained in the water, so that its removal (the suspended matter) either by subsidence or filtration will remove a great portion of the organic matter and bacteria.

Int. 15. In regard to this question would say, that it is not known that water containins these amounts of suspended matter has made anyone seriously sick. It is believed that the suspended matter *per se*, is not a direct cause of disease, though it is quite possible, that slight digestive derangement of a temporary nature may occur in those who are not accustomed to the water and drink it freely.

Int. 16. I regret that I have not the time to give you full quotations from the various authorities on the subject of water supplies.

Int. 17. The filter was not in operation when I visited your city. Work was being done upon the filter, and at the time of my visit was far from being completed.

[SEAL.] F. C. MARX, Not. Pub.

A. L. M.

250 Answers to Cross-interrogatories.

X Int. 1. The samples of water were collected by me in person. Mr. Crumpler only furnished me with such help as I called for *i. e.* a man to act as boatman, so that I could collect the samples of water from midstream, and from the intake pipe of the water works Co. Mr. Crumpler at my request, also furnished me with a driver, who took me from place to place at my quest for samples of water. I personally collected all samples of water. The samples were in my possession until I placed the peculiar know upon the corks and bottles, and I -a-v to it that these knots were not disturbed or tampered with, when they reached me. The waters which were examined bacteriologically did not leave my hands. I came to Vicksburg prepared for this special bacteriological work. The initial work of growing the bacteria was commenced in your city.

X Int. 2. From midstream; from the intake pipe of the water

works Co., from the storage basin of the water works Co., from a hydrant in Bazinski's stable.

X Int. 3. The filtration plant was not in operation.

X Int. 4. I do not know.

X Int. 5. To my knowledge, no chemicals were used at the time that I visited your city. I must confess that I looked for some unknown to Mr. Crumpler, but I did not see even a vestige of a chemical anywhere in sight.

— Int. 6. In answer to this interrogatory would say, that in pronouncing the water good and wholesome, I was guided entirely by the results of the sanitary analysis and bacteriological examinations.

The results of the sanitary analysis and bacteriological examinations proved that the samples of water collected by me were good and wholesome.

X Int. 7. I know most positively that the water source of the water supply of your city is obtained from the Mississippi river. I know that the Yazoo empties into the Mississippi river.

X Int. 8. I know from personal observation that the sewerage of Vicksburg is at least in part, thrown into the Yazoo, above the intake pipe of the water works Co. I also know that the waters to some distance at the outfall of the sewer is contaminated. This later statement is made in a most positive form. I made it a point while in your city to study the conditions of sewerage pollution, and I took samples of water from a distance of about 10 feet from short, and I have examined this water from a sanitary and bacteriological point of view.

X Int. 9. In my judgment the water was collected within two miles of the intake pipe of the water works company. The analysis and examination shows decided sewerage pollution. I herewith gives results of said examination.

Analysis Expressed in Parts per 1,000,000.

Suspended matter	226.180
Dissolved matter	261.920
Oxygen consumed	15.000
Chlorine as chlorides	21.120
Nitrogen as albumenoid ammonia	0.900
Nitrogen as free ammonia	0.540
Nitrogen as nitrites	0.420
Nitrogen as nitrates	0.690
Phosphates	Heavy traces.
Number of bacteria per cubic centimetre	22.400

Fifty per cent. of the bacteria belonged to the class known as the *baccilli coli communis*, which bacteria comes from the intestinal canal of animals.

X Int. 10. You will find answer to this interrogatory on page two (2) of the direct interrogatories.

251 X Int. 11. All the waters examined by me chemically and bacteriologically are good and wholesome, the only one, which was not wholeso-e is the sample collected by me from the Yazoo branch, and this water must be considered as a little better than diluted faces and urine.

X Int. 12. I do not know anything about the Vicksburg Water Works filter, as the same was not in use, in fact was not finished when I was in your city. The difference in quantities of suspended matter, as well as organic matter and bacteria, I attribute to the excellent arrangements of the storage basins, with their baffles and overflow, the water that was collected by me and analyzed by me certainly was good and wholesome.

X Int. 13. I did Analysis of the hydrant water is given on page two, of my answers to the direct interrogatories.

X Int. 14. I did analyze the water from the storage basins. You will find results of said examination on page two of my answers to the direct interrogatories.

X Int. 14. By the expression "good and wholesome" is meant, water that is fit for drinking and domestic purposes, the lat-er including its fitness also for cooking and other household uses. The water is fitted for boiler and technical uses as well.

X Int. 16. I want to emphasize the fact that the city of Vicksburg is menaced with danged to a serious degree by sewerage contamination from the sewer outfall above the water compan*ie*'s plant. It is a condition which should not be trifled with, for no community, in my opinion, has the right, nor can they afford to take such chances as threaten your city, for as your city grows in population, the danger will become correspondingly greater. The location of the sewer discharge, a comparatively short distance above the intake pipe of the waterworks is to be strongly condemned. The location of the sewer outfall should b*r* below the waterworks plant not above it.

A. L. METZ, M. D.

Sworn to and subscribed before *m*e, this 8th. day of Januar*u*, 1904.

[SEAL.] FRED C. MARX, Not. Pub.

A. L. M.

The above and foregoing has the following indorsement thereon, to-wit:—41 Equity. United States circuit court southern district of Mississippi.—Vicksburg Water Works Company *vs.* Mayor & Aldermen of the City of Vicksburg, Mississippi.—Deposition of Dr. A. L. Metz, taken by Frederic C. Marx & notary, commissioner of deeds, 206 Baroone street.—Filed Jan'y 9th, 1904. L. B. Moseley, clerk, J. H. Short, D. C.

252 Deposition of Richard W. Jones.

In the Circuit Court of the United States *in* the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed and understood that the answers of R. W. Jones, to the appended interrogatories and cross interrogatories, when made under oath before some officer authorized in the State of Louisiana to administer oaths, may be read in evidence on the hearing of the above entitled case, subject only to objections for irrelevancy and incompetency. Notice, commission and all matters of form are hereby waived expressly. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal caption and certiricate of such officer *is* expressly waived, and the certificate shall be sufficient if in the following form: "Sworn to and subscribed before me, this — day of ——, # —," and signed by the officer, with dates properly filled out

HUDSON & FOX AND
SMITH, HIRSH & LANDAU,
Solicitors for Complainant.

W. J. VOLLOR AND
MAGRUDER, BRYSON & DABNEY,
Solicitors for Defendants.

253 Interrogatory 1. Please state your name, age, residence and occupation.

Int. 2. State how long you have been engaged in such occupation, and the opportunities you have had and the experience in analizing waters, so far as potability is concerned, and its fitness for manufacturing purposes.

Int. 3. In order to furnish the court proper information upon the subject-matter of this question, please state fully the character and extent of your opportunities and experience.

Int. 4. State whether you have made any analysis of water at Vicksburg, for the Vicksburg Water Works Company, and if so, when?

Int. 5. State in detail the result of this analysis, both in popular and technical language.

Int. 6. State anything else you may know of importance to either party to this case.

254 Cross-interrogatories.

X Interrogatory 1. If you should state in answer to the direct interrogatories that you have analyzed samples of water taken from

either the basin at the waterworks ppant, or from any of the pipes on the line of mains of the Vicksburg Water Works Company, state whether or not you were present when such samples of water were taken from said basin or from said mains, and if not, state how you came into possession of the water analyzed by you.

X Int. 2. State from what point or points on the mains your samples of water were obtained.

X Int. 3. State whether the filtration plant now in use by the company was in operation at the time your samples were obtained.

X Int. 4. State, if you know, whether the samples analyzed by you were of the same quality as that usually furnished to the mayor & aldermen of the city of Vicksburg, and the inhabitants of said city.

X Int. 5. State, if you know, whether the Vicksburg Water Works Company puts any chemicals or other foreign substance of any kind into its supply of water after the same has been taken from the Mississippi river, or other source before pumping such water into its mains for the use of its consumers, and if you state that said water company does put said chemicals or other foreign substance into its supply of water, state what ssuch chemicals or substance so used is, and state its effect or chemical reaction upon the water, or upon any impurities that may be in the same.

X Int. 6. State whether or not you consider the water used by said company and delivered by it through its mains t- the mayor & aldermen of the city of Vicksburg and to the inha-itants of said city good and wholesome, and if you state that you so cojsider it, state whether or not you consider the said water good and wholesome as it is taken from the source of supply, and before it is treated with chemicals, and before it is passed through the filtration plant, and if you state that you do not, give your reasons for so stating.

X Int. 7. State, if you know, the source of supply of water
255 used by the said company, particularly whether or not the water used by the said water works company, and supplied to the said mayor & aldermen of the city of Vicksburg, and the inhabitants of said city is obtained from the Mississippi river, or not, and if you state that it is so obtained, state, if you know, whether or not any part of the same is from water discharged from the Yazoo river.

X Int. 8. State, if you know, whether or not the said supply of water above mentioned is in any way contaminated, or polluted by sewerage matter or other effete matter or offal from the city of Vicksburg?

X Int. 9. State whether or not you have analyzed any water taken from the Yazoo river in front of the city of Vicksburg, before the water has passed the intake pipe of said water works company, but within a mile of said intake pipe, and if you state that you have state the quality of the same, and whether or not you yound any sewerage pollution in the said waters.

X Int. 10. State whether or not you have analyzed any water

taken from the Mississippi river at or near the point from which the supply of water taken and used by the Vicksburg Water Works Company is obtained, and if you state that you have, give the analysis of the same, and state whether or not you consider it good and wholesome.

X Int. 11. If you state that any of the water from the Vicksburg Water Works Company analyzed by you, was not good for all purposes, or that the same was not wholesome, state the purposes for which you would say it is not good, and state your reasons for saying that it is not wholesome.

X Int. 12. State, if you kno-, whether or not the water supplied and furnished by the Vicksburg Water Works Company, either to the mayor & alderman of the city of Vicksburg, or to the inhabitants of said city, and passed through the Vicksburg water works filter, the same as the water analyzed by you was treated and filtered, and if you state that you do not know, state whether or not you can say that the water usually furnished by said company to said mayor & aldermen and to the inhabitants of said city of Vicksburg, is of the same quality as that analyzed by you, and if
256 you cannot say that it is, state whether you know as a matter of fact whether the water usually and ordinarily furnished by the Vicksburg Water Works Company to the said mayor & aldermen of thee city of Vicksburg, and the inhabitants of said city is good and wholesome.

X Int. 13. State whether or not you analyzed any water from said waterworks mains, or hydrants prior to the installation of the filtration plant now in use by said company, and if you state that you did, give the analysis of the same.

X Int. 14. If you have analyzed any samples of water taken from the basins of said company before the same has passed through the filtration plant, give the analysis of same.

— Int. 15. If you have used the expression "good and wholesome" in your answer to any of the above interrogatories, state the exact meaning or definition of the said term, or expression as used and understood by you.

X Int. 16. Do you know, or can you set forth, any other matter of thing which may be a benefit or advantage to the parties at issue in this cayse, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

257 In the Circuit Court of the United States in the Southern District of Mississippi, Western Division Thereof.

Answers to Interrogatories in the Case of The Vicksburg Water Works Company *vs.* Mayor and Aldermen of the City of Vicksburg.

Interrogatory 1. Richard W. Jones, age 66, residence University of Mississippi. Professor of chemistry in the University of Mississippi.

Int. 2. I have been professor of chemistry in the university 23 years. I have also taught chemistry in two other colleges. I graduated in the University of Virginia, and have studied in other institutes in this country, and somewhat in Europe.

Int. 3. I have had a long experience in analyzing waters. I mention only some of those analyzed in Mississippi; Natchez, Meridian, Holly Springs, Oxford, University, Water Valley, Senatobia, West Point, Macon, Port Gibson, and many private springs and wells.

Int. 4. I made an analysis of water for the Vicksburg Water Works Company July, 1903.

Int. 5. As a result of my chemical analysis, I report as follows, stating the several determinations in parts per million.

Appearance clear, no odor, no turbidity.

Reaction alkaline.

Total solids in solution	166.000
Loss on ignition	58.000
Chlorine	8.620
Free am-onia	0.015
Albuminoid am-onia	0.100
Nitrites	None
Nitrates	0.021
Oxygen consumed	2.100

Tjis analysis shows that this water according to the highest and severest standards would be classed as "pure and wholesome," for drinking purposes. The hardness and the solids in solution
258 are not sufficient to render it unfit for industrial purposes.

From a careful inspection, I formed the opinion that the settling basins and the filter units were admirably constructed. All tye silt and mud was removed from the water, the process of filtration involved the use of a small quantity of the solution of ferrous sulphate, and of the solution of lime. These acting on each other, and on the organic matter in the water, finally form ferric hydrate, coagulating the albuminous material in the water, causing it and the mud to settle, and putting it in such condition that the filter units arrest it all and allow only the clear water with its dissolved material to pass into the basin, from which the water is pumped to consumers in the city.

During my stay of five days in Vicksburg in July, 1903, I took part in a careful bacteriological examination of the filtered water. It was found that there were so few bacteria in the filtered water that they amounted practically to nothing. From this point of view as well as from the chemical, I should say it is safe, potable water.

259 Answers to Cross interrogatories.

Cross-int. 1. I was present each time when the water was taken for the bacteriological analyses. This was done twice a day from the 4th. to the 8th. of July. The water was generally taken from the filtered water in the basin from which the water is pumped to consumers. One sample was taken in my presence from the pipe in Hotel Piazza, and I took myself a sample from the pipe in the Carroll.

The water for the chemical analysis was taken in my presence from the basin of filtered water and was on the same kind as pumped to consumers in the city. I assisted in putting it into a clean demijohn. I took part in fastening the cork with a wire, making a hole in the cork, and passing the wire through it so that no one could tamper with it without my knowledge. After this was done it was shipped by express to me at Oxford, Miss. When I received the demijohn it has not been opened.

Cross-int. 2. Answer given in 1.

Cross-int. 3. It was.

Cross-int. 4. The samples of water I analyzed were of the same quality as that furnished to the city from July 4th. to 8th. inclusive while I was in Vicksburg.

Cross-int. 5. The answer to this cross-interrogatory is given in the answer to direct interrogatory 5. I will state further that the quantity of crystal-ized sulphate of iron, and also the quantity of lime, which are added to the Mississippi River water is small, being only one grain and twelve hundredths of iron sulphate to the gallon, and thirty-six hundredths grain of lime to the gallon of water.

The lime combines with the acid in the iron salt, and then forms ferrous hydrate, this undergoes oxidation, and conversion into ferris hydrate which acts as before described. See answer to direct interrogatory 5.

X Int. 6. I consider the filtered water furnished by the Vicksburg Water Works Company through its mains to the mayor and aldermen of the city of Vicksburg, and to the inhabitants of said city good and wholesome." I did not analyze the Mississippi River water as it is taken from the course of supply at Vicksburg.

260 Cross-int. 7. I know that the Mississippi river is the source of supply used by the Vicksburg Water Works Company. I saw the pumps at work forcing the water from the river into the settling basins; but I am not very familiar with the general typog-

raphy there. I think the intake is below the point where the Yazoo enters the Mississippi.

Cross-int. 8. I do not know. I made no analysis except of the filtered water as furnished to the mayor, aldermen and citizens of Vicksburg.

Cross-int. 9. I have not.

Cross-int. 10. I have not.

Cross-int. 11. I did not state that the filtered water *us* not good for all purposes, nor have I stated that it is not *w*holesome.

Cross-int. 12. At the time of my visit and examination July 4th–8th, (inclusive) 1903, I saw no way by which any water could be pumped into the mains an*f* thereby supplied to the mayor, aldermen and citizens of Vicksburg, except that water from the basin of clear filtered water; that was the kind and quality which was being supplied when I made *n*y examination and analysis.

Cross-int. 13. I analyzed no water for said water works company prior to the installation of the filtration plant now in use by said company.

Cross-int. 14. I have not analyzed any samples taken from any of the basins before they have passed through the filtration plant.

Cross-int. 15. I mean by "good and wholesome" as descriptive of water that the water has no bad odor, nor taste, no color, no turbidity, that it possessed in a high degree freedom from animal impurities, and from veg*i*table substances in a decaying condition, and that it will not produce disease by reason of mineral or organic substances in solution, that it will serve industrial purposes.

Cross-int. 16. I know of nothing that will throw further light on the question except to say that I was very favorable impressed by the water works plant including the filter beds and thought the company was furnishing good, wholesome water.

R. W. JONES.

Sworn to and subscribed before me, this the 7th day of Jan'y, 1904.

[SEAL.] J. O. RAMSEY,
Chancery Clerk, Lafayette County, Miss., &
Ex-officio Notary Public.

261 The above and foregoing has the following indorsement, thereon, to-wit: 41. Equity. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the City of Vicksburg—Deposition of R. W. Jones—Filed Jan'y 9, 1904, L. B. Moseley, clerk, J. H. Short, D. C.

Depositions of M. O. Crumpler, A. L. Pierce, J. B. Smith, & Wm. Stanton.

Caption.

STATE OF MISSISSIPPI, County of Warren, City of Vicksburg, } ss:

Be it remembered, that on this the 20th. day of November, A. D. 1902, by virtue and pursuance of an order of the Honorable H. C. Niles, judge of the circuit court of the United States for the southern district of Mississippi, appointing me to take depositions of witnesses on the motion of complainant praying for an injunction restraining the city of Vicksburg from using, authorizing or permitting the inhabitants or other persons of Vicksburg from connecting with or depositing sewerage matter, or using same for sewerage purposes in what is known as an underground gutter on Washington street in Vicksburg, Miss., in a certain case therein pending in said court wherein The Vicksburg Waterworks Company is complainant, and The Mayor & Board of Aldermen of the City of Vicksburg are defendants, and the attached interrogatories being filed with me a-d copies thereof being served on the defendants and their counsel of record by the marshal of the southern district of Mississippi, on the 10th. day of November, A. D. 1902, together with notice of time and place of taking such testimony, I caused the said M. O. Crumpler, J. B. Smith, William Stanton & A. L. Pierce, each and every one of them being of sound mind and upwards of twenty-one years of age, to come before me at my office in the city of Vicksburg, county of Warren & State of Mississippi, and said M. O. Crumpler, J. B. Smith, William Stanton & A. L. Pierce being separately cautioned and first duly sworn to speak the truth, the whole truth and nothing but the truth in said answer to said interrogatories, did depose and say:

262 In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

To the Mayor and Aldermen of the City of Vicksburg, William Vollor, and Magruder, Bryson & Dabney, its attorneys of record:

Enclosed we hand you copies of interrogatories to be propounded to M. O. Crumpler, A. L. Pierce, & J. B. Smith, & Wm. Stanton, this day filed in the office of the clerk of the circuit court of the United States, western division of the southern district of Mississippi. Kindly file with said clerk ten days from this date, in accordance

with rule of practice number 67 of the courts of equity of the United States. After the expiration of the said ten days, we will request a commission to be issued in accordance with the said rule.

S. S. HUNDON,
SMITH, HIRSH & LANDAU,
Att'ys for Pl'ff.

The United States marshall will please serve copies of the above notices with copies of the said interrogatories upon the Mayor and Aldermen of the City of Vicksburg, William Vollor, and Magruder, Bryson & Dabney, their solicitors of record.

263 In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to M. O. Crumpler.

Int. I. State your name, age, residence and occupation.

Int. II. How long have you been engaged in such occupation?

Int. III. How long have you resided in the city of Vicksburg?

Int. IV. Do you know anything about an underground sewer or culvert in the city of Vicksburg, under Washington street, extending *extending* along the main business portion of said city on said street?

Int. V. If you have answered the preceding interrogatory in the affirmative, state where the outlet to this sewer is situated.

Int. VI. State, if you know, for what purpose the said sewer or culvert was originally constructed.

Int. VII. State, if you know, to what use the said sewer is now put?

Int. VIII. State fully whether or not there have been any connections made with said sewer through sewers laid on other streets in the city of Vicksburg.

Int. IX. To what use have such connected sewers been put?

Int. X. State, if you know, what will be the effect of such use upon the water supply of the city of Vicksburg and its inhabitants so far as your company is concerned.

Int. XI. State whether your company has protested or objected to the use of the said gutter or sewer for the purpose about which you have testified; and, if so, state fully what your company has done in that connection.

Int. XII. State, if you know, what is the population of the city of Vicksburg; how many customers your company is now supplying with water; how many houses it is now supplying with water;

about how many people are living or doing business on Washington street; and also state the size of the buildings connected
264 with the said sewer, and the usual number of inmates therein.

Int. XIII. Do you know of any existing conditions which is creating a continuous flow of water by the outlet of the said underground gutter, and which flows directly in front of the city water works. Please file a map showing the said gutter and the sewerage connections therewith, and the relative positions of the sewerage outlet and the intake pipe of the water works company.

Int. XIV. Do you know of any ordinance or resolution authorizing any sewerage connection with the said underground gutter.

Int. XV. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

265 In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to A. L. Pierce.

Int. I. State your name, age, residence and occupation.

Int. II. How long have you been a civil engineer and practicing that profession?

Int. III. *Was* you ever civil engineer for the city of Vicksburg, and if so, what years?

Int. IV. As civil engineer did you ever draw the plans for an underground gutter to be built on Washington street, Vicksburg Mississippi; and if so, was it ever built, and who supervised the construction of the same; how long is this gutter; where does it begin, and what is its size, and for what purpose was it built, and when was it built, and who built it?

Int. V. Was it or not ever designed or constructed for, or was it ever contemplated that said culvert was to be used for sewerage of excremental matter.

Int. VI. Does this underground gutter empty into any body of water; and if so, what is its name, and into what body of water does it flow, if any?

Int. VII. Which way does the current of the water flow with reference to the mouth of this gutter and the intake pipe of the City Water Works Company?

Int. III. Do you know, or can you set forth any other matter or

thing which may be a benefit or advantage to the parties at issue, in this cause, or either of them or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

266 In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be Propounded to J. B. Smith.

Int. I. State your name, age, residence and occupation, and how long you have been engaged in such occupation?

Int. II. How long have you resided in the city of Vicksburg?

Int. III. State, if you know, for what purpose the sewer on Washington street in the said city of Vicksburg, was originally constructed.

Int. IV. State to what use the said sewer is now put.

Int. V. State where is the outlet of the said sewer.

Int. VI. State if you can about what quantity of excremental matter is received daily in said sewer and discharged therefrom at its outlet.

Int. VII. State if you know, either accurately or approximately, how many water closets are now connected with the said sewer?

Int. VIII. State, if you know, whether all of these closets are actively and daily in use.

Int. IX. By whose authority or consent is this sewer used in connection with these water closets, or for the discharge of sewerage or excremental matter?

Int. X. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

267 In Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
v.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

Interrogatories to be propounded to William Stanton.

Int. I. State your name, age, occupation and place of residence.

Int. II. Were you ever a contractor, and if so, what years?

Int. III. As contractor, did you ever construct an underground gutter on Washington street in the city of Vicksburg, Mississippi, and if so, who for?

Int. IV. How long is this gutter; where does it end, and where begin; what is its size; what was it built for, and where it its outlet?

Int. V. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

268 Answers to Interrogatories Propounded to M. O. Crumpler.

Ans. to Int. No. 1. M. O. Crumpler, over twenty-one, live in Vicksburg, and manager of the city waterworks.

Ans. to Int. No. 2. Since August 15th, 1900.

Ans. to Int. No. 3. I have been in Vicksburg since August 15th, 1900.

Ans. to Int. No. 4. Yes, I know there is an underground culvert along the principal business portion of Washington street, for a distance of about eight blocks.

Ans. to Int. No. 5. The outlet, or discharge of said sewer is at the foot of Main street, about one block west of Washington street.

Ans. to Int. No. 6. The sewer was originally constructed for the purpose of carrying off surface water.

Ans. to Int. No. 7. The sewer is now used for water closet and urinal connections for the purpose of carrying off the excremental matter and to carry off the surface water.

Ans. to Int. No. 8. There has been, and is now, sewer mains laid along other streets which have ther connections and outlet into the sewer on Washington street. Theses streets are, Veto, South, Crawford, Clay, China, Grove, Jackson & Main, each of which have a sewer main laid along them and all connected with Washington Street sewer.

Ans. to Int. No. 9. The residence-, stores and other premises on these streets have their water closets connected with these sewers and use them daily, all of which have their outlet into the sewer on Washington street, above described.

269 Ans. to Int. No. 10. I know it to be a fact that the excremental matter discharged from these sewers which is near the intake pipes of the city waterworks will pollute the water so as to produce typhoid fever and other fatal diseases. In other cities where a similar condition, as to the sewer outler and intake pipes of the city waterworks exist, it has produced typhoid fever and other diseases to an alarming extent.

Ans. to Int. No. 11. Yes, our company has protested again and again against the use of said culvert for sewerage purposes, that is, for such purpose as it has recently been put to, such as water closet

connections etc. The City Water Works Company filed a suit in the United States court some eighteen months ago to have such usages stopped, but the mayor and council have continued to permit, not only the closets then connected to be continually used, but have permitted and authorized sewer mains and water closets to be connected and used and are to this very day allowing such mains and connections to be made. The water company has personally, together with its attorneys gone before the board of mayor and aldermen about two months ago with a written petition requesting them to quit the use of said culvert for water closet connections, but like similar complaints, it seems to have fallen on barren ground. I attach a copy of said written petition to my interrogatories and mark same Exhibit "A," and make same a part of my answer.

Ans. to Int. No. 12. The pupolation of Vicksburg and its suburbs is about 22,000. We are supplying about seven thousand five hundred people with water. Very near the entire business of the city is done on Washington street, and its immediate section. I think there are about nine or ten thousand people living and doing business on Washington street and its immediate section. All of the big hotels, office buildings, stores and other public buildings, such as the custom house, and postoffice buoldings, and most all stores, restaurants, saloons, etc. on Washington street and immediate section have their water closets connected either directly or indirectly with the sewer along Washington street and the lateral sewers
270 connected therewith.

Ans. to Int. No. 13. Yes, there is an existing condition which is creating a condition that causes the water to flow by the outlet of said underground gutter or sewer along Washington street, which causes the water to flow directly in front of the city water works intake pipes. I attach a map to my interrogatories and mark it Exhibit "B" and make same part of my answer, which shows the sewer on Washington street, together with the lateral sewers connected therewith, and the outlet of same and the city waterworks intake pipes, showing their relative position.

Ans. to Int. No. 14. Yes, I know that the city council have passed resolutions authorizing permitting or genarally acquiescing in sewer mains being laid and water closets being connected therewith, all of which have their outlet at place designated on map Exhibit "B."

Ans. to Int. No. 15. The city waterworks were built in 1887, and the pumping station and intake pipes were located on the Mississippi river at which point it gets its supply of water for city and domestic purposes and that it has continued to get water from said place up to the present time and is doing so now. When the city waterworks located its pumping plant below said outlet of sewer, the sewer was used for surface drainage only, and no water closet was then connected with the sewer, and was not until within the last few years. The condition continues to get worse by the continued daily connections of water closets in the most thickly populated part of the city, as well as other parts of

the city. The health of the city is impaired by this condition of affairs, and besides this condition will ruin the city waterworks in this, it will cause the patrons to stop the use of the water and will throw the company into bankruptcy. The city council has also within the last twelve months or such a matter, made or caused to be made the entire dumpage from the scavenger carts of the city just below the outlet of this sewer. The dumpage consists of
271 matter gathered up by the scavenger carts over the city consisting of all waste and rotten matter, such as rotten cabbage, potatoes, bananas, apples, peaches, grapes and all other rotten vegetables and fruits, such as is usually put into slop barrels. Also all small dead animals, such as cats, dogs, rats, etc., all of which contaminates and pollutes the water at the intake pipe of the city waterworks from this place of dumpage.

M. O. CRUMPLER.

Sworn to and subscribed before me, this 20th. day of November, 1902.

J. H. SHORT,
Special Commissioner & U. S. Commissioner.

272 EXHIBIT "A."

SEPTEMBER 22ND, 1902.

To the honorable Mayor and Aldermen of Vicksburg Mississippi.

GENTLEMEN: We most respectfully but earnestly, call your attention to the dangerous condition that now partly exists, and which will wholly exist as soon as the contemplated canal is fully completed and the Yazoo river is flowing directly in front of the city, which we presume will be the case after the next thirty foot rise in the Mississippi river, and is likely to come at any time, and almost certain to come not later than ninety days.

We refer to the sewerage excremental matter that is being discharged from the culvert at the foot of Washington St. just north of the Y. & M. V. passenger depot. This culvert was originally built for surface drainage only, but has been turned into a sewer for stores, hotels and other buildings along Washington street for a distance of about eight blocks. There have been also sewer mains laid along Veto, South, Crawford, Clay, China, Grove, Jackson and Main streets connecting with this culvert; residences and other buildings along these streets are connected or being connected daily with these sewer mains, so that the entire sewerage outlet of the city is at the foot of Washington St., as above stated, thus attempting to make a complete sewerage system in the most thickly populated portion of the city.

We think it also proper to state that all these connections have either been made by your direct authority, or by your formal acquiescence. We especially call your attention to the further fact

that the outlet of this excremental matter is at a point above where the intake pipes of the city water works are located, and therefore, partially pollutes the water, not during high water, at the intake pipes, of the Mississippi river, but as soon as the canal is open and the Yazoo river is allowed to flow directly in front of the city the pollution of the water at that point by this excremental matter will be continuous every day and every hour, thereby contaminating the waters at the intake pipes of the city water works, located
273 about one mile from the sewerage outlet making it unfit for use, and thus producing typhoid fever and impairing the health of the city, and causing the patrons of the city to stop the use of the water and entailing great loss upon us.

You will undoubtedly recall that when the pumping station of the water works was located, neither this culvert, nor any of the connections was then used as a sewer, and that it has only been used for sewer purposes within the last few years, a use which has been sanctioned by you.

A bill was filed as you are aware, in the United States court by this company praying among other things for a decree directing your honorable body to stop the use of this culvert for sewerage purposes, but notwithstanding the pendence of this litigation you have continued to permit it and authorage this sewerare connection, and on this very day there are sewer mains being laid to or connected with this culvert by your authority or consent, and if this practice is not discontinued this company will be irreparably injured.

We respectfully request your honorable body to remedy the condition to which we allude without compelling us to apply for an injunction to obtain relief. We also respectfully notify you that unless your honorable body prevents this culvert being used for sewerage purposes, and thus remove this constant menace to the health of the people, the city will necessar-y be held liable for any and all damages and expenses the water company may sustain, or be put to, as you are already responsible for permitting this condition of affairs to exist.

We respectfully request that you take immediate measures to remove this great cause of complaint.

(Signed) VICKSBURG WATER WORKS CO.
S. S. HUDSON.
SMITH, HIRSH & LANDAU.

Exhibit "A." J. H. Short, special commissioner.

274 Deposition of William Stanton.

Ans. to Int. No. 1. My name is William Stanton, age 62, occupation architect, place of residence, town of Speed's Addition.

Ans. to Int. No. 2. Yes, from 1866 to 1882.

Ans. to Int. No. 3. Yes, my firm, Stanton & Company, did. The underground gutter was constructed for the city of Vicksburg.

Ans. to Int. No. 4. The underground gutter constructed by my firm extended from Veto street along Washington street, and emptied into Lake Centennial at the foot of First East street, about seven blocks in length. Its internal diameter was four feet at Veto street, and gradually increased to eight feet.

Ans. to Int. No. 5. The purpose for which the underground gutter along Washington street was originally constructed was to carry off the surface water caused by rains which in their descent down the hill cut the streets west of Washington street very badly, and also for the purpose of draining the basements of the buildings on the east side of Washington street, and it fully performed this duty.

WILLIAM STANTON.

Sworn to and subscribed before me, at Vicksburg, Miss., this 20th day of November, 1902.

J. H. SHORT,
Special & U. S. Commissioner.

275 Deposition of J. B. Smith.

Ans. to Int. No. 1. J. B. Smith, age 42, residence Vicksburg, Miss., occupation, plumber. Have been engaged in present business about 18 years.

Ans. to Int. No. 2. Have lived here all my life having been born here.

Ans. to Int. No. 3. My information and understanding is that it was built there for drainage of surface water. It is now used to drain surface water water closets, urinals, and sinks. The present outlet of the said sewer is into Lake Centennial, near the foot of Main street.

Ans. to Int. No. 4. See answer to No. 3.

Ans. to Int. No. 5. See answer to No. 3.

Ans. to Int. No. 6. It is impossible to calculate this.

Ans. to Int. No. 7. I think that there are between three and four hundred water closets and urinals connected with this sewer at present.

Ans. to Int. No. 8. I think they are all in use daily.

Ans. to Int. No. 9. I know of a great many put in by consent of the board of mayor and aldermen of Vicksburg.

Ans. to Int. No. 10. It is my opinion that the use of this underground gutter along the most populous street of the city is a menace to the health of the city, and the sewerage thus discharged flows down past the intake pipes of the city water works and pollutes the supply furnished the city.

J. B. SMITH.

Sworn to and subscribed before me, at Vicksburg, Miss. this 20th. day of November, 1902.

J. H. SHORT,
Special & U. S. Commissioner.

276 Deposition of A. L. Pierce.

Ans. to Int. No. 1. A. L. Pierce, age 66, residence is Vicksburg Miss. surveyor and civil engineer.

Ans. to Int. No. 2. 45 years.

Ans. to Int. No. 3. Yes, I was civil engineer for the city of Vicksburg in the years 1870 & 1871.

Ans. to Int. No. 4. Yes I did. Yes it was built, and I supervised its construction. It is about three hundred feet in length. It begins at intersection of Veto and Washington streets and is constructed down the center of Washington street to First East street. At Veto street the size was three feet, and it gradually grew larger and was six feet by six feet at the outlet at the foot of First East street. As shown by diagram hereto attached, marked Exhibit "A," and made a part of this answer. This underground gutter was built for the purpose of surface drainage, and constructed in 1871 as near as I can remember, by the firm of Stanton & McKenna.

Ans. to Int. No. 5. I think not.

Ans. to Int. No. 6. At the time it was constructed it emptied into the Mississippi river, but now empties into Lake Centennial.

Ans. to Int. No. 7. The outlet of this gutter is above the intake pipes of the city waterworks, and the water flows south from the outlet and towards and past the intakes pipes of the water works.

Ans. to Int. No. 8. The discharge of the excremental matter into the water so near the intake pipes of the waterworks is endangering the health of the city.

A. L. PIERCE.

Sworn to and subscribed before me, at Vicksburg, Miss. this 20th. day of November, 1902.

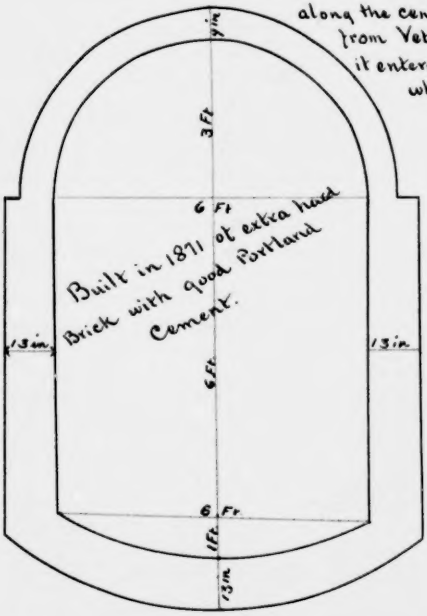
J. H. SHORT,
Special & U. S. Commissioner.

(Here follows diagram marked page 276½.)

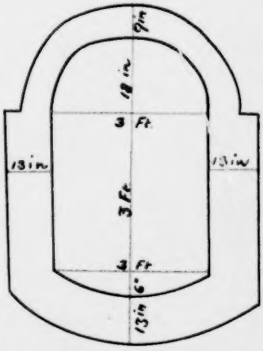
No. 133.
Vicksburg
Water Works
} p 276½

(276 1/2)

This Sewer is 3000 ft. long, being built along the centre of Washington St from Veto to 1st East St., where it entered the Mississippi river, when first constructed.



Cross Section of Washington St. Sewer at 1st East Street.



Cross Section of Sewer at intersection of Veto and Washington Sts.

Exhibit "A" to A. L. Bierce deposition.

277 Certificate.

STATE OF MISSISSIPPI, } ss:
County of Warren, City of Vicksburg, }

I Joseph H. Short, specially a commissioner in the cause styled in the caption of the foregoing depositions, to take the testimony of witnesses for the complainant in said cause, do hereby certify that I caused to come before me, M. O. Crumpler, J. B. Smith, William Stanton and A. L. Pierce, at my office in the postoffice building in the city of Vicksburg, in the county of Warren and State of Mississippi, aforesaid, and they being by me first separately duly cautioned, sworn and examined, to speak the truth, the whole truth and nothing but the truth, I did carefully and impartially examine said witnesses on said interrogatories (no cross interrogatories having been filed by defendants, or their attorneys), when they did depose and testify as above shown; that the answers of each and all of said witnesses were by me reduced to writing on a typewriting machine in the presence of said witnesses, and by me carefully read to and thoroughly understood by said witnesses each as his deposition in said cause; that each signed his name to his own and as his deposition in my presence; that the questions propounded to said witnesses and to which he has answered are the interrogatories submitted to me by complainant, and copies of which were served on said defendants and their attorneys of record, and that said depositions have in no manner been altered or changed since the same were subscribed by said witnesses, but that the same with exhibits thereto which are herewith returned, have remained in my possession up to the time of delivering the same into the hands of the clerk of the said court. And I further certify that during the examination no counsel appeared for either side but that the questions were read to each witness each his own and separately and direct by me.

And I further certify that I am not of counsel for either side and am not concerned in the aforementioned cause, either directly or indirectly.

In witness whereof, I have hereunto set my hand and affixed my seal of office, as an United States commissioner this 20th. day of November, A. D. 1902.

JOSEPH H. SHORT,

[SEAL.] Special Commissioner in this Cause & United States Commissioner for the Southern District of Mississippi.

The above and foregoing has the following indorsement thereon, to-wit: #41. In equity—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Depositions of M. O. Crumpler, J. B. Smith, A. L. Pierce & Wm. Stanton.—Filed Nov. 20th, 1902, L. B. Mosely, clerk, J. H. Short, D. C.

278 Deposition of H. J. Trowbridge.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. —.

It is understood and agreed that the answers of H. J. Trowbridge, to the appended interrogatories and cross-interrogatories, when made under oath before some officer authorized by the State of Miss. to administer oaths, may be read in evidence on the hearing of the above entitled cause, subject only to objections for irrelevancy and incompetency; notice and commission and all metters of form are hereby expressly waived; the certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer *is* expressly waived, and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscribed before me this — day of —— " and signed by the officer with dates properly filled in.

HUDSON & FOX &
SMITH, HIRSH & LANDAU,
Att'ys for Complainant.
W. J. VOLLOR &
MAGRUDBR, BRYSON & DABNEY,
Att'ys for Defendant.

Interrogatories to be Propounded to H. J. Trowbridge, City Clerk, Vicksburg, Miss.

Int. 1. State your name, age residence and occupation?

Int. 2. If you state that you are a city clerk for the defendant, please state how long you have held that office?

Int. 3. Who has charge of the minutes, resolutions, ordinances, committee reports, and records of the defendant?

Int. 4. If the said minutes, resolutions, ordinances, committee reports and records are in your possession, examine same carefully, and state whether there is any report, resolution, or ordinance prior to November, 1900, condemning or in any sense annul-ing, criticising or complaining of the Vicksburg water supply by the Vicksburg Water Works Company for the character of water delivered
279 by the management and operation of the plant, or maintaining in any manner that the contract had been forfeited in the slightest degree.

Int. 5. Has the defendant a contract with the complainant for the rental of fire hydrants for fire protection and what is the duration

of that contract and what does the city now pay for the same per annum?

Int. 6. As city clerk, do you issue warrants on the city treasurer to pay said debts, if so, please examine your records and state from them whether, or not, the city ever refused to pay the water company for water prior to the 15th. of Aug. 1900 and please state when these bills are due and payable, and state whether or not it has refused to pay the bills since the 15th. of Aug. 1900, except by mandamus of the court.

Int. 7. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue, or either of them, or tham may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

Int. 8. Please state if the records of the city show that the city council ever permitted or consented or contracted with any person or persons to lay sewer mains or pipes along any of the street- or alleys or elsewhere in the city of Vicksburg, to connect water closets with the storm sewer on Washington street or for the purpose of discharging excremental or other waste matter into the said storm sewer, and if so, please give in detail the dates when, and the names of the parties to whom, such permission was given or contract let to make or build such connections with the said storm sewer on Washington street.

Int. 9. Please state if permission was ever given or contract let by the council of the city to any person or persons to make or build said sewer connections with the storm sewer on Washington street prior to the installation of the water works plant in 1887 and 1888.

Int. 10. Please give the total indebtedness of the city of Vicksburg at the time of the last annual statement.

280 Int. 11. Please give the total assessed value of all the taxable property, both real and personal, in the city of Vicksburg, as shown by the last assessment rolls.

Int. 12. What provisions, if any, of the Annotated Code of Mississippi of 1892 has the city of Vicksburg adopted within the past year, and elected to be governed by, and who were the aldermen of Vicksburg, 7th. Nov. 1900?

281 Cross-interrogatories.

X interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water, northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply?

X Int. 3. Can you state whether the water discharged from the

Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing concum-tion.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution.

X Int. 5. State if it is not a fact that for the greater part of its course, the Yazoo river passes over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered *bad* and that if it is used for drinking purposes it is likely to produce malarial diseases.

X Int. 6. State if it is not a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river, about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of said Washington Street sewer.

X Int. 8. State as fully as you can, the extent of sewerage carried by said sewer, and discharged through it into the Yazoo river, especially state if it — not a fact that nearly all of the business houses on Washington street do not have their water closets dis-
282 charged into said sewer, and particularly does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish club, Elks club, opera house, jail, St. Francis *Exvier's* college, Vicksburg sanatarium, city hall, and U. S. postoffice and practically all of the dwellings on South street from Adams street west to Washington street drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and, if before, state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the water works in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully as you can the general direction of the surface drainage from the city of Vicksburg and particularly whether or not it is westward from the larger part of said city into the Yazoo and Mississippi rivers, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you *yave* such knowledge, state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg and other consumers by said water works company prior to the installation of the filter plant.

283 X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state it has not, state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals, before being passed through the filter.

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals which had been used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor or scent if it had any, since the installation of the filter plant, and whether the same was not charged with mud and other insoluble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit for all purposes of domestic or manufacturing consumption in its original state as it is taken from the source of supply and before it is treated in any way by chemicals or passed through the filter.

284 X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reasons in full.

X Int. 24. If you cannot state that it is free from contamination, state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water as taken from the

source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state, as taken from the source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examination.

X Int. 28. If you have stated in answer to any of the foregoing interrogatories, that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz: "that it shall be free from all sewerage contamination, and shall be good and wholesome water, fit for all purposes of domestic or manufacturing consumption," state the particular quality or ground wherein it falls short of such standard and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company prior to the installation of its filter treated the said water in any way by chemicals, or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins, before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins and how long the water was permitted to remain therein before pumping the same into the mains for use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation you have ever heard of such that was supplied with water taken from a strea-, which flowed through or by such city, town or village at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know of, have seen or heard — such city, town or village, give the name and location of such.

X Int. 35. State, if you know anything of the plant, that is, machinery and ways, means and appliances used by said water works company in obtaining a supply of water and distributing the same to

its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply, and putting the same into its settling basins, what is the size and number of lines of pipe in use by said com-
286 pany from its pump house to the Mississippi river, what is the number and size of the engine used in lifting or pumping water from the said Mississippi river into the settling basins of said company, what is the capacity per day for taking water from said Mississippi river and putting the same into the settling basins now in use by said company does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be mover or shifted as the said river rises or falls, and if you state it does, state what rise or fall of said river reqyired the same to be so shifted, and state the time req-ired for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in liftin*f* its water from the river and supplying the same in the basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

X Int. 36. State if it is not a fact that in August, 1900, the management of the water works system in this city was changed and that one Mr. M. O. Crumpler about that time assumed the management of said system taking the place of Mr. C. R. McFarland, who for a number of years before then, managed the same.

X Int. 37. State if there were any shut-downs during the management of said McFarland, and if you state that there were, state as well as you can how many, giving *f*ates and duration of time, that there was not sufficient water under sufficient pressure to afford ample protection against fire to defendant city and its inhabitants.

X Int. 38. State the causes if you can of such shut-downs, during McFarland's management of said system.

X Int. 39. State whether there have been any shut-downs since said Crumpler took charge of said water works system, and if you state that there have been, state as well as you can the num-
287 ber, and frequency of the same, and approximate as closely as you can the duration of each.

X Int. 40. State if it is not a fact that for frequent and long periods of time since the said Crumpler became the manager of said waterworks company that the water in the mains if any at all, was under insufficient pressure to afford any protection against fire, give particulars as fully as you can.

X Int. 41. Is it not a fact that the complainant waterworks company since August, 1900, has frequently and for comparatively long periods of time, failed to furnish through the means of its waterworks system an adequate supply of water for public and private use. If you state that it has, state to what extent the supply has been inadequate and for what purposes.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

288 Deposition of H. J. Trowbridge, witness for plaintiff, to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant in the case of Vicksburg Water Works Co. *vs.* Mayor and Aldermen City of Vicksburg, taken before J. H. Short, a notary public, on Friday, February 26th, 1904.

Witness being first duly sworn, testified as follows:

Ans. Int. 1. H. J. Trowbridge, age 52, residence Vicksburg, occupation, city clerk of the city of Vicksburg.

Ans. Int. 2. Held the office of city clerk for the past twenty years.

Ans. Int. 3. I have charge of the minutes, ordinances, committee reports, and records of the defendants.

Ans. Int. 4. I have examined the records, and do not find that any complaint was made prior to November, 1900.

Ans. Int. 5. The city has a contract with complainant for the rental of hydrants for fire protection. The contract extends for 50 years beginning Nov. 19th, 1886, and it is for 100 hydrants at $65.00 a year, additional hydrants at $50.00 a year.

Ans. Int. 6. The city never refused to pay the bills of the water works company prior to August 15th, 1900. These bills are due and payable January and July of each year. These bills have been refused payment since the 15th of August, 1900.

Ans. Int. 7. I know nothing at the present time.

Ans. Int. 8. Contract let to J. B. Smith to build sewer pipe for city hall, April 7th, 1903.

Ans. Int. 9. I have examined the records and failed to find where any permission was given.

Ans. Int. 10. The total debt is $627,254.78.

Ans. Int. 11. $6,738,256.00

Ans. Int. 12. The issuance of $50,000.00 city hall bonds. Power to confer upon the board of mayor and aldermen the right to regulate and control the prices to be charged for the use of water, gas, electricity, and other public necessities, and to prescribe and refuse reasonable regulations governing the supply of said necessities, and for other purposes, and it adopted sections 3014, 3015, & 3016 of the Annotated Code of 1892 of Mississippi. The aldermen of the city of Vicksburg on 7th Nov. 1900, were Joe Homburger, Tom Coughlin, D. Montgomery, M. J. Fouse, R. M. Kelly, John Walsh, D. A. Campbell & J. J. Hayes.

289 Answers of H. J. Trowbridge to Cross-interrogatories.

Ans. X Int. 1. About half mile, I think.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I know nothing about whether the water discharged from the Yazoo river is wholesome, and fit for domestic purposes.

Ans. X Int. 4. I cannot say.
Ans. X Int. 5. I cannot say.
Ans. X Int. 6. Yes.
Ans. X Int. 7. I think the sewer running along Washington street is about seven blocks lone. I suppose the sewer along Washington street is about nine or ten feet in diamater.
Ans. X Int. 8. To the first part of this question I answer I do not know. Yes, it is a fact that all the sewerage from the business houses, and other places named in this question, empties into the said sewer, that empties into the Yazoo canal, at the foot of Main street.
Ans. X Int. 9. The sewer was constructed before the waterworks plant was installed. My recollection is the sewer was constructed about the year 1875, or 1876, somewhere along in there.
Ans. X Int. 10. The Yazoo river now empties into the canal running by Vicksburg that is constructed to empty into the Mississippi river; it used to empty into the Mississippi river several miles above Vicksburg at Youngs point.
Ans. X Int. 11. I cannot answer.
Ans. X Int. 12. The general direction of the surface drainage from the city is westward.
Ans. X Int. 13. I cannot answer.
Ans. X Int. 14. I cannot answer.
Ans. X Int. 15. It was very muddy.
Ans. X Int. 16. It is very good and clear.
Ans. X Int. 17. I cannot answer.
Ans. X Int. 18. I cannot answer.
Ans. X Int. 19. I cannot answer, I do not know.
Ans. X Int. 20. I have made no tests nor examinations.
Ans. X Int. 21. I cannot answer.
Ans. X Int. 22. I cannot answer.
Ans. X Int. 23. I cannot answer.
Ans. X Int. 24. I cannot answer.
Ans. X Int. 25. I cannot answer.
Ans. X Int. 26. I cannot answer.
Ans. X Int. 27. I have made no tests or examinations.
Ans. X Int. 28. I cannot answer.
Ans. X Int. 29. I cannot answer.
Ans. X Int. 30. I cannot answee.
290 Ans. X Int. 31. I do not know.
Ans. X Int. 32. I do not know.
Ans. X Int. 33. I cannot answer.
Ans. X Int. 34. I cannot answer.
Ans. X Int. 35. I cannot answer.
Ans. X Int. 36. Yes.
Ans. X Int. 37. My recollection is that there were no shut downs during the management of C. R. McFarland.
Ans. X Int. 38. As stated above, there were no shut downs.

Ans. X Int. 39. There have been shut downs since the time Crumpler took charge I cannot say as to number or duration.

Ans. X Int. 40. I cannot say.

Ans. X Int. 41. I cannot answer.

H. J. TROWBRIDGE.

Sworn to and subscribed before me, this 26 day of February, 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—#41 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Deposition of H. J. Trowbridge. Filed Feb'y 29, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

291 Depositions of F. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, C. Linstrom, & J. Voeinkle.

Circuit Court of the United States in and for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. —.

It is understood and agreed that the answers of J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brennan, J. B. Smith, D. H. Herman, T. L. Flanagan, C. Linstrom, & J. Voeinkle, to the appended interrogatories and cross-interrogatories when made under oath before some officer authorized in the State of Mississippi to administer oaths, may be read in evidence on the hearing of the above entitled cause subject only to objections for irrelevancy and incompetency, notice and commissions and all matters of form are hereby expressly waived. The certificate of the officer taking the deposition shall be conclusive evidence of his authority to administer oaths, and formal captions and certificate of such officer *is* expressly waived, and the certificate shall be sufficient, if it is in the following form: "Sworn to and subscribed before me this — day of ——" and signed by the officer with the dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.
W. J. VOLLOR &
BRYSON & DABNEY,
Attorneys for Defendant.

292 Interrogatories to be Propounded to J. J. Powers, T. Streuby, E. S. Butts, J. M. A. Brenna-, J. B. Smith, D. H. Herman, T. L. Flanagan, C. Linstrom, J. Voerinkle.

Int. 1. State your name, age, residence and occupation.

Int. 2. State if you can, when the waterworks plant in Vicksburg was constructed.

Int. 3. State if you know from what source the water works company in Vicksburg receives its water supply, and how long it has received it from this source if you know?

Int. 4. What water have you been in the habit of drinking while residing in the city of Vicksburg?

Int. 5. Have you ever had occasion to use the Mississippi River water for domestic and manufacturing purposes?

Int. 6. If you have ever had occasion to use the Mississippi River water, state to what extent you have used such water, and from what point or points did you obtain said water?

Int. 7. Do you know the reputation of said water for wholesomeness, and if so, what is it?

Int. 8. From your experience and knowledge what is the character of said water for wholesomeness and manufacturing purposes?

Int. 9. If y-u know, how does the health of the people of the city of Vicksburg compare with the health of people of other cities of Mississippi and Louisiana, of the same size, and even of a smaller size, since the construction and operation of the water works plant?

Int. 10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them or that may be material to the subject of this your examination, or the matters in question in this case; if yea, set forth the same and at large in your answer.

293 Cross-interrogatories.

X interrogatory 1. State the distance, as well as you can estimate the same from the intake pipe through which the Vicksburg Water Works Company obtains its supply of water northward to the point where the Yazoo river empties into the Mississippi.

X Int. 2. State if the Yazoo river does not empty into the Mississippi on the same side that the said water works company obtains its supply.

X Int. 3. Can you say whether the water discharged from the Yazoo river is good and wholesome, and fit for all purposes of domestic or manufacturing concumption.

X Int. 4. Can you say that the water discharged from the Yazoo river is free from sewer pollution?

X Int. 5. State if it is not a fact that for the greater part of its

course, the Yazoo river does not pass over and through a low delta country, the soil of which has been deposited from overflow water from the Mississippi river, and if you state that such is the fact, state if it is not true that the water in Yazoo river is generally considered bad, and that if it is used for drinking purposes, it is likely to produce malarial diseases.

X Int. 6. State if it — not a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo river about a mile or a mile and a half above the point where the same empties into the Mississippi river, and about two miles north of the intake pipe of the water works company.

X Int. 7. State as fully as you can the size and length of the said Washington Street sewer.

X Int. 8. State as fully as you can the extent of sewerage carried by said sewer, and discharged though it into the Yazoo river,
294 especially state if it is not a fact that nearly all of the business houses on Washington street have their water closets discharged into said sewer and particularly, does not the offal and excrement from water closets and from other sources from the Washington hotel, Carroll hotel, Piazza hotel, Jewish Club, Elks Club, opera house, jail, St. Francis Xavier's college, Vicksburg sanatarium, city hall, and U. S. postoffice, and practically all of the dwellings on South street from Adams street west to Washington street, drain into and discharge through said sewer.

X Int. 9. State whether the said sewer was constructed before or since the water works plant was installed, and if before state as fully as you can about what year the said sewer was constructed.

X Int. 10. State what change has taken place since the construction of the water works in regard to point of discharge of the Yazoo river.

X Int. 11. State what change, if any, in regard to the opportunity of sewerage contamination of the water supply has taken place.

X Int. 12. State as fully ad you can the general direction of the surface drainage from the city of Vicksburg, and particularly whether or not it is westward from the larger part of said city into the Yazoo river and Mississippi river, and along such part of the same as is within two miles of the intake pipe of said company.

X Int. 13. State if you have any knowledge of the extent of contamination of the water of the Yazoo river by such sewerage both from said Washington Street sewer and from said surface drainage, and if you state that you have such knowledge state as fully as you can the extent of the contamination, and whether the water from said Yazoo river is good and wholesome and fit for domestic uses.

X Int. 14. State whether any part of the water taken and used by said water works company comes from the Yazoo river, and if you state that it does, state whether such part of the water so used by said company is fit for domestic purposes.

295 X Int. 15. State as fully as you can the character and quality of the water furnished to the mayor & aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant now in use.

X Int. 16. State the character and quality of water furnished as aforesaid, since the installation of said filtration plant.

X Int. 17. State as fully as you can whether all water so furnished as aforesaid, since the installation of said filter plant has been passed through said plant, and if you state that it has not, state how often said company has furnished such unfiltered water, and how long at a time.

X Int. 18. State whether such unfiltered water was pumped from basins containing sediment from water previously treated with chemicals before being passed through the filter:

X Int. 19. State whether such unfiltered water so furnished as aforesaid, was not contaminated with chemicals, which had been used in preparing water before then passed through the filter. If you state that you do not know, state as fully as you can the appearance of the unfiltered water supplied to consumers, and its odor and scent if it had any since the installation of the filter plant, and whether the same was not charged with mud, and other insoluble matter in excess of what it was when first taken from the river.

X Int. 20. State any tests or examinations you may have made with unfiltered water since the installation of the said filter.

X Int. 21. State the quality of the water supply used by said company when it is first pumped into its basins by said company, when it is first pumped into its basins and before the same has been treated in any way with chemicals or passed through the filter.

X Int. 22. Is the water taken and used by said company free from sewerage, contamination, and good and wholesome and fit
296 for all purposes of domestic or manufacturing consumption in its original state, as it is taken from the source of supply, and before it is treated in any way by chemicals or passed through the filter.

X Int. 23. If you cannot say that it is free from sewerage, state why you are unwilling to so state, giving your reason in full.

X Int. 24. If you cannot state that it is free from contamination state why you are not willing to so state, and if you have observed or otherwise know of any contamination state what it is or was.

X Int. 25. If you cannot state that such water as taken from the source of supply of said company is and has been at all times good, wholesome water, state why you have not considered the same good and wholesome.

X Int. 26. If you cannot state that said water as taken from the source of supply is and at all times has been fit for all purposes of domestic and manufacturing purposes, state in what regard it fell short of such standard.

X Int. 27. State as fully as you can to what tests or examinations you have put such water to in its original state as taken from the

source of supply, and if you have not tested the same for all purposes both in regard to domestic and manufacturing purposes, state if you have any knowledge of the same in regard to uses not coming under any of your tests or examination.

X Int. 28. If you have stated in answer to any of the foregoing interrogatories that the water as taken by said company from the source of supply falls short of the standard of purity above mentioned, viz. "That it shall be free from all sewerage, contamination, and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption," state the particular quality or ground wherein it falls short of such standard, and to what extent it fails or has failed to meet the required standard.

X Int. 29. State whether said company, prior to the installation of its filter treated the said water in any way by chemicals or otherwise, so as to improve the quality of the same before pumping it into its mains for use by its consumers.

297 X Int. 30. State whether said company maintained settling basins at its pumping station, and pumped the water from its source of supply first into such basins before delivering same to consumers, and if you state that it did, state if you know the size or capacity of such basins, and how long the water was permitted to remain therein before pumping the same into the mains for the use of consumers.

X Int. 31. State, if you know, whether the said water was materially benefited or improved by being allowed to remain in said basins for such time.

X Int. 32. State, if you know, how long said basins were allowed to stand without having the sediment from such water removed therefrom.

X Int. 33. State whether or not you filtered, or in any other way treated the water supplied you by said company, or any part thereof, before using the same, and if you state that you did, state why you found it necessary to filter or otherwise treat the same.

X Int. 34. State, if you know, of any other city, town or village or if, in your travels, you have ever seen such, or if in your reading or conversation, you have ever heard of such that was supplied with water taken from a stream which flowed through or by such city, town or village, at a point on such stream below the point where the sewerage of such city, town or village emptied into such stream. If you state that you know, have seen, or heard of such city, town or village, give the name and location of such.

X Int. 35. State, if you know, anything of the plant, that is, machinery, ways, means and appliances used by said water works company, in obtaining a supply of water and distributing the same to its several consumers, and if you state that you do, state and describe its machinery and appliances used in obtaining water from the source of supply and putting the same into its settling basins, what is the size and number of lines of pipe in use by said

298 company, from its pumphouse to the Mississippi river, what is the number and size of the engine used in lifting or pump-

ing water from the said Mississippi river into the settling basins of said company, what is the capacity per day for taking water from the said Mississippi river, and putting the same into the settling basins now in use by said company, does the pumping engine or engines used by said company in so taking and lifting water from said river into said basins require to be moved or shifted as the said river rises or falls, and if you say it does, state what rise or fall of said river requires the same to be so shifted and state the time required for such shift, state if the machinery, ways or appliances now and heretofore in use by said company in lifting its water from the river and supplying the same in its basins is in duplicate so that one set can be kept in operation while the other is being shifted on the river bank.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

299 Answers of J. Voeinkle.

Deposition of Jake Voeinkle, Taken on the 12th Day of February, 1904, by J. H. Short, Notary Public, in the Case of Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg, Taken on Behalf of Plaintiff.

Ans. Int. 1. Jake Voeinkle, age 64, residence Vicksburg, Miss. Occupation engineer of the Vicksburg fire department. Have been in the employ of the fire department of the city of Vicksburg for the past 35 years, with the exception of one year.

Ans. Int. 2. The water works plant in the city of Vicksburg was accepted by the city of Vicksburg in 1889.

Ans. Int. 3. The source of the water supply of the water works in Vicksburg is the Mississippi river. It has received water from this source, and this source only, since its construction.

Ans. Int. 4. I have both a cistern and hydrant at my home, and use both for drinking, although I usually drink the hydrant water. I ran on the river for a number of years as a steamboat engineer and never drank any other kind of water, and always found it wholesome.

Ans. Int. 5. As I have already stated, I use the hydrant water in my home for domestic purposes. When I was engineer on a steamboat on the Mississippi river, we, of course, used the Mississippi River water in the boilers. I know the Vicksburg ice making plant has bored a well, but used Mississippi River water obtained from the Vicksburg water works, in preference to the well water. I have also used Mississippi River water in the fire engines, and found no objection to it.

Ans. Int. 6. See answers to previous interrogatories. The water that I have used on the steamboat was obtained directly from the river and that for other purposes was obtained from the hydrants.

Ans. Int. 7. I have never heard Mississippi River water condemned. As far as I know it is very wholesome.

Ans. Int. 8. My experience and knowledge of this water is that there is no water more wholesome for drinking purposes, and for manufacturing purposes, I have never found any water that is better. There is nothing better.

Ans. Int. 9. I have no knowledge of the facts referred to in this question.

Ans. Int. 10. I do not know.

300 Cross-interrogatories propounded to JAKE VOKINKLE, a witness for plaintiff, his answers to the same being as follows:

Ans. X Int. 1. The distance as well as I can estimate it, from the intake through which the Vicksburg Water Works Co. obtains its supply of water, to the point where the Yazoo river now empties into the Mississippi, through the new canal, is between one half, and a mile.

Ans. X Int. 2. The Yazoo river does empty into the Mississippi, on the same side that the said water works company obtains its supply.

Ans. X Int. 3. I have drank the water from the Yazoo river, when I was steamboating, without any bad effects, but I do not know whether it is as good and wholesome as the Mississippi River water or not, I cannot say.

Ans. X Int. 4. I do not know.

Ans. X Int. 5. It is a fact that for the greater part of its course, the Yazoo river does pass over and through a low delta country, but I do not know how the soil of it was deposited, whether it was deposited from overflow water from the Mississippi river or not. I cannot say whether the Yazoo River water is generally considered bad, have never heard of it having such a reputation, but I know that there is a great deal of malaria in that country. I don't know what the malaria comes from.

Ans. X Int. 6. It is a fact that the sewerage from a large sewer along and under Washington street in the city of Vicksburg is emptied into said Yazoo River canal, about one and one-half miles or two miles from the intake pipe of the water works company.

Ans. X Int. 7. About seven blocks long, and at the south end it is about four feet, as near as I can remember, and it is about ten feet at the north end, or mouth.

Ans. X Int. 8. I do not know the amount of sewerage emptied into said canal by this sewer. I do not know how many business houses on Washington street have their water closest discharge into said sewer, but I know that there are some. I know the Valley Dry Goods Company's water closet has a connection with the sewer. I have no personal knowledge if the public buildings and hotels mentioned in the question, having connection with the sewer.

Ans. X Int. 9. The sewer was constructed long before the water

works plant was built. It was built somewhere about 1870, or 1871.

Ans. X Int. 10. When the water works was constructed, the mouth of the Yazoo river was about six miles north of what is known as the lower landing at Vicksburg; now the Yazoo River canal empties into the Mississippi river at the Vicksburg lower landing. There is a difference of about six miles between the distance of the mouth of the said Yazoo river from the intake *mile* at present, from where that was when the water works was constructed.

Ans. X Int. 11. I do not know anything about what change has taken place.

Ans. X Int. 12. As near as I can tell, the surface drainage from the city of Vicksburg is westward from said city in the Yazoo River canal and the Mississippi river, and most of it is within two miles of the intake pipe of said water works company.

Ans. X Int. 13. I have no knowledge of the extent of the contamination of the water of the Yazoo river by such sewerage from surface drainage, and the Washington Street sewer. I am not competent to analyze the water, and as to the wholesomeness of the Yazoo River water, and its fitness for domestic purposes, I cannot say any more than I have already stated in previous answers.

Ans. X Int. 14. I do not know whether the intake pipe of the water works takes any of the Yazoo River water, or whether it is all strictly Mississippi River water.

301 Ans. X Int. 15. The water furnished to the mayor and aldermen of the city of Vicksburg, and other consumers by said water works company, prior to the installation of the filter plant, now in use, was generally muddy. The condition of the water furnished depended greatly on the stage of water in the Mississippi river.

Ans. X Int. 16. The water now furnished, since the installation of said filtration plant, is clear.

Ans. X Int. 17. Since the installation of the filtration plant by the water works company, the water has been generally clear; I do not remember but one occasion on which the water was otherwise, and then there was some kind of a break down at the plant, and they had to pump the water direct from the river.

Ans. X Int. 18. I have no knowledge whatever as to this.

Ans. X Int. 19. I do not know whether such unfiltered water that was furnished on the occasion referred to by me, in the answer to the previous interrogatory, passed through any chemicals or not. The appearance of the water on that occasion was muddy, but I detected neither odor nor scent. I cannot say that it was charged with any more mud, or other insoluble matter than the water would be if taken directly from the river, in fact, it had the appearance of having been pumped directly from the river into the pipes.

Ans. X Int. 20. I have never made any examinations since the filtration plant has been installed.

Ans. X Int. 21. It is just like ordinary Mississippi River water, and I like it in its natural state. The mud never bothered me, in fact

I prefer it to the clear water now furnished, but the clear water is prettier, and it is generally preferred by a majority of the people.

Ans. X Int. 22. I cannot say whether the water taken and used by the water works company contains any sewerage, or is contaminated in any way, because I am not a chemist, and have never analyzed it. I cannot say that it is, nor that it is not; I think that the water furnished is as good and wholesome as if taken directly from the river. I do not think that the chemicals that are put in it to clarify the water injures it in any way.

Ans. X Int. 23. I am not unwilling to state, but I simply have no knowledge on the subject.

Ans. X Int. 24. I cannot state whether it is free from contamination, or otherwise. I have no reasons for not stating, and I have *ho* means of observing, or knowing whether the water is contaminated I have never had any bad effects from the water brought directly to my personal observation.

Ans. X Int. 25. There has been occasions on which the water has been excessively muddy, but I have generally considered it wholesome for *fomestic* and manufacturing purposes, and have never observed any bad effects from it.

Ans. X Int. 26. As far as I am competent to pass on the wholesomeness of this water for domestic and manufacturing purposes, the only difference that I have observed is that at times it has been very muddy. As stated in a formed answer, since the installation of the filter, the water has been muddy only on one occasion.

Ans. X Int. 25. I have not made any tests or examinations, in fact, I am not competent to do so, but have used the water as taken from the waterworks for drinking purposes at my home, and also used it to make steam in the fire engines.

302 Ans. X Int. 28. In answer to this question, I will say, that if the water is taken by the water works company from its source of supply, falls short in any regard, it has in the past not been as clear as it should be. So far as it being contaminated, or containing any sewerage, I am not able to say. As already stated, I have considered the water, good, wholesome water, fit for all purposes, and since the filter has been put in, the water has been clear enough to suit anyone. I would say, that it would require a chemical analysis to show that the water contained any sewerage, or other contamination, as I have never observed any smell or odor to it.

Ans. X Int. 29. They only used the filtering basins, and no chemicals were used. It was simply passed from layers of sand and gravel.

Ans. X Int. 30. They had, and used, settling basins, four or five sections of them. I never measured them, but from their appearance I would say they contained between two and three hundred thousand gallons apiece. The length of time that the water was retained in these settling basins depended entirely on the demand of the consumers, the smaller the demand, the longer the water re-

mained in the settling basins. I cannot say what was the average length of time the water remained there.

Ans. X Int. 31. I do not know how long it was allowed to remain there, so I cannot say. Of course the longer it remained in the settling basins, the clearer it became.

Ans. X Int. 32. I know that these basins were clean. Mr. McFarland borrowed hose from me on one or two occasions. I have no means of knowing how often they were cleaned out.

Ans. X Int. 33. I never filtered or treated the water; supplied by the water works company in any way. I do not like filtered water, I drink the water just as it is supplied by the company, and nothing that it contains bothered me. At the engine house they have a filter, and when I want a drink of water I take it directly from the pipes, and never drink the filtered water.

Ans. X Int. 34. I have no knowledge of any of the matters and things touched on in this question.

Ans. X Int. 35. I am fully acquainted with the pumping station of the water works company, and have been since its inception. Formerly they had two reciprocating pipes to supply water from the river to the settling tanks. It was necessary on account of the shifting stage of the water in the Mississippi river, to move these pumps several times during the course of a year. While they were moving them, they had to shut off the supply of water furnished to the city. About a month ago a centrifical pump, with a claimed capacity of five million gallons of water per day was installed in a well, the bottom of which is only seven feet above the water in the Mississippi river at its lowest stage. It is now unnecessary to ever move this pump, barring some unfor-seen accident. The well in which this pump is installed is cemented, and otherwise protected, and as far as can be seen, all precautions have been taken to guard against accidents of any kind, so that the supply of water will continue uninterrupted. There is only one pump of the kind described, but the engineer of the pumping plant informed me that all of the pieces of the said pumping system, that were liable to breakage, were in duplicate, so that in case of an accident, the same could be repaired in a very short time. The old river pumps formerly in use, are to be put in perfect repair, and used in case of emergency.

JACOB VOEINKLE.

STATE OF MISSISSIPPI, }
County of Warren, } ss:

Sworn to and subscribed before me, this 12th. day of February, 1904.

[SEAL.]

J. H. SHORT,
Notary Public.

303 Answers of J. M. A. Brennan.

Deposition of J. M. A. Brennan, witness for plaintiff, in the case of Vicksburg Water Works Company *vs.* Mayor and Aldermen of the City of Vicksburg, to interrogatories and cross-interrogatories *and cross-interrogatories* propounded by attorneys for plaintiff and defendant, taken before J. H. Short, a notary public, on the *23d* day of February, 1904.

Witness testified as follows:—

Ans. Int. 1. J. M. A. Brennan, age 49 years, residence Vicksburg, in the liquor business.

Ans. Int. 2. It was about 1883.

Ans. Int. 3. From the Mississippi river, and has ever since its construction.

Ans. Int. 4. The water from the water works supply.

Ans. Int. 5. It was the Mississippi River water that I used for domestic purposes, supplied by that company.

Ans. Int. 6. Yes, at my residence, for drinking and cooking purposes, obtained from the water supply company.

Ans. Int. 7. I do not from my personal knowledge, except by the use of the said water furnished by the water supply company, and used at my residence as above stated, for about 15 years.

Ans. Int. 8. Good.

Ans. Int. 9. As far as I know, the health of our people compares favorably with any city of its size.

Ans. Int. 10. None that I know of.

304 Answers of J. M. A. Brennan to Cross-interrogatories.

Ans. X Int. 1. About one half a mile.

Ans. X Int. 2. Yes.

Ans. X Int. 3. I do not know anything about that, as I understand it, the Mississippi River water, you may get some Yazoo River water, now.

Ans. X Int. 4. The Washington St. sewer empties into the Yazoo now at the north of the city, which is about two miles from the intake pipe of the Vicksburg Water Works Company.

Ans. X Int. 5. The greater portion of the course of the Yazoo river to my knowledge, passes through a low and delta country, said soil not being deposited from overflow water from the Mississippi river. There are hills and bluffs n-rth of the Yazoo Valley R. R. bridge on the east side of the Yazoo river, that are not low, delta soil. I would say extending six or seven miles north of said bridge. I do not know that the water of the Yazoo river is considered bad, and cannot recall that I ever heard that it was.

Ans. X Int. 6. Yes.

Ans. X Int. 7. The length of the sewer is about 7 blocks long. The size of the sewer is about 15 feet in diameter, I think.

Ans. X Int. 8. I believe this to be a fact.

Ans. X Int. 9. The sewer was constructed in 1870, or 1871.

Ans. X Int. 10. At the time of the construction of the water-works, the Yazoo river emptied into the Mississippi river about five miles above where the water works plant is situated. Now the Yazoo river empties into the Mississippi about one half mile above the intake pipe of the water works company, by way of a canal or channel that has since been constructed.

Ans. X Int. 11. The sewer contamination is very much improved on account of the Yazoo river, which is a running stream passing into the canal and into the Mississippi river.

Ans. X Int. 12. It does, from Cherry street. I mean the surface drainage.

Ans. X Int. 13. I have no knowledge of the extent of contamination, and as for the water, I still use it for the same purpose that I always did, and I find it wholesome, and fit for domestic purposes.

Ans. X Int. 14. I do not know of my own knowledge whether the water works company are using the Mississippi River water, or the Yazoo River water, but I do know that the Yazoo River water empties into the Mississippi about one half mile north of the intake pipe of the water works company.

Ans. X Int. 15. I believe it to be the same water that I used at my residence prior to the construction of the filtration plant of the Vicksburg Water Works Company plant; the water was muddy.

Ans. X Int. 16. Since the institution of the said filteration plant the water is clear.

Ans. X Int. 17. I think *on* two or three times, to the best of my recollection, since the institution of the filteration plant, the water at my residence was quite muddy, lasting over two days.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. I do not know. On one or two occasions the water appeared muddy, but I could detect no scent or odor about it.

Ans. X int. 20. I have made none.

Ans. X Int. 21. It depended upon the stages of the river, if the water was high, it was muddy, if it was low, it was clear.

305 Ans. X Int. 22. I know nothing of the quality of the water, or whether it is contaminated from sewerage or not, but I do know it is wholesome and fit water for domestic purposes.

Ans. X Int. 23. I do not know that it is free from sewerage, that depends upon the current of the Mississippi river where the Yazoo enters into the Mississippi river about one half mile north of the intake pipe of the said water works company.

Ans. X Int. 24. I do not know of any contamination from use of the water.

Ans. X Int. 25. I always considered it good and wholesome.

Ans. X Int. 26. I have no complaint to make of its quality, or character.

Ans. X Int. 27. I have made no tests, other than the use of the

water for all domestic purposes, and the good health that my family enjoys.

Ans. X Int. 28. I have no complaint to make.

Ans. X Int. 29. Not to my knowledge.

Ans. X Int. 30. When the water works company plant was first erected they used two basins for filtering purposes, as I understand it. I think they used them but for a short while, when they were set aside for what reason, I do not know.

Ans. X Int. 31. I do not know.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. Yes, I have a small filter at my home, which the water passes through before used. My reason for getting it was to make the water clear, because it used to be very muddy.

Ans. X Int. 34. I do not think there is another town on earth situated like Vicksburg; I have never heard of any.

Ans. X Int. 35. I am not a mechanic, but a sinful politician.

J. M. A. BRENNAN.

Sworn to and subscribed before me, this 23 day of Feb'y, 1904.

[SEAL.] J. H. SHORT,
Notary Public.

306 Answers of F. Streuby.

Deposition of Mr. F. Strueby to Interrogatories and Cross-Interrogatories Propounded by Attorneys for Plaintiff and Defendant, Taken Before J. H. Short at His Office February 17th, 1904.

Ans. Int. 1. F. Strueby, age 63; residence Piazza hotel; occupation manager Lever Bros. oil mills, Vicksburg, Mississippi.

Ans. Int. 2. I do not know.

Ans. Int. 3. I know it receives it from the Mississippi river, but I do not know how long they have been getting it from that source.

Ans. Int. 4. Such as the hotels furnished, that is, I presume, Mississippi River water, taken from the water works.

Ans. Int. 5. Yes, have been using it for nearly ten years now, for manufacturing purposes.

Ans. Int. 6. The water I have been using for manufacturing purposes I have taken from the Vicksburg water works, who deliver it to me at the mill through their system of pipes.

Ans. Int. 7. My judgment is that it is good and wholesome water.

Ans. Int. 8. Good.

Ans. Int. 9. I think it compares very favorably.

Ans. Int. 10. I know of no other matter or thing that would be of advantage to either party of the controversy.

307 Answers of F. Strueby to Cross-interrogatories.

Ans. X Int. 1. Well, I should judge it would be about one quarter of a mile. Yes, I should judge the intake pipe is about one quarter of a mile below the mouth of the Yazoo River canal.

Ans. X Int. 2. It does.

Ans. X Int. 3. I know of no reason why it should be otherwise.

Ans. X Int. 4. I cannot. I do not know whether it is or not; I have never examined it.

Ans. X Int. 5. The country that it passes through is similar to the delta that the Mississippi passes through. I believe that the soil through which the Yazoo river flows, has been largely deposited by the overflows of the Mississippi river. I do not know that the water in this river is generally considered bad, and unfit for drinking purposes, nor do I know that it produces malarial diseases.

Ans. X Int. 6. There is such a sewer on Washington street; it empties into the Yazoo canal near the Valley passenger depot, or near the foot of Main street. I do not know the distance from the mouth of this sewer to the canal, or from the mouth of the sewer to the intake pipe of the water-works company.

Ans. X Int. 7. I have no knowledge of where it begins, nor the size of it.

Ans. X Int. 8. I have no positive knowledge of what goes into it, nor the amount of sewerage discharged by it. I have no personal knowledge of what houses have their water closets connected with this sewer, except that I am informed that the Piazza hotel's water closets discharge into it.

Ans. X Int. 9. I do not know.

Ans. X Int. 10. The Yazoo river used to discharge into the Mississippi river about five miles above the present discharge.

Ans. X Int. 11. That would require an examination, and I have no knowledge of the matter.

Ans. X Int. 12. The direction of the surface drainage from the city of Vicksburg is generally westward into the Yazoo River canal, and the Mississippi river. The territory covered by such drainage, I should judge, is within two miles of the intake pipe of said water works company.

Ans. X Int. 13. I have no knowledge.

Ans. X Int. 14. I am unable to answer this question, because I have made no actual observations, I would state, however, that I have some engineering knowledge, and that in my opinion, knowing that all forces come at a straight and direct line, would say that the current of the Mississippi river would strike the eastern bank just about the mouth of the Yazoo canal, and would be deflected by that bank just about that point; this would throw the water of the Yazoo canal, which empties into the Mississippi river at that point, on to the opposite, or western shore, the greater bulk of the water thus discharged by the canal being carried over in that direction, thus leav-

ing very little of the Yazoo River water to be taken up by the intake pipe of the water works company. I attach a little diagram, marked Exhibit "A," and forming a part of this deposition. I do not know anything about the wholesomeness of the water from the Yazoo river, but the water so taken up by the intake pipe of the water works company should be good and wholesome water.

308 Ans. X Int. 15. The character of that water was always such as the Mississippi river furnishes at its different stages, some times very muddy, and at other times, at low water stage, quite clear.

Ans. X Int. 16. It has been, with one or two exceptions, perfectly clear.

Ans. X Int. 17. With the one or two exceptions above referred to, the water has been perfectly clear, as stated. The occasions referred to by me was caused by break-downs at the power house, and they were of short duration. I do not know when they occurred, nor the exact duration.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. I do not know whether such unfiltered water so furnished was contaminated with chemicals, which had been used in preparing the water before it passed through the filter, because I have made no chemical analysis of it. The water on occasions when it came to me unfiltered, was muddy in appearance, but had no scent or odor that I recall.

Ans. X Int. 20. I have never made any.

Ans. X Int. 21. It is just ordinary Mississippi River water.

Ans. X Int. 22. I do not know anything about the sewerage. I do not know anything about its wholesomeness, but I know it is good for manufacturing purposes. It is good for manufacturing purposes in its original state, but it is better with the mud taken out.

Ans. X Int. 23. I do not know.

Ans. X Int. 24. I do not know.

Ans. X Int. 25. I have already stated that I have at all times considered it good for manufacturing purposes, and I have no knowledge of it in domestic uses. It always came up to the standard of purety.

Ans. X Int. 26. I have already stated that it did not fall short of such standard.

Ans. X Int. 27. I have made no tests or examinations.

Ans. X Int. 28. I have not stated that it fell short of the desired standard.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. They did maintain settling basins at its pumping station, and pumped the water from its source of supply into said basins before delivering to consumers. I do not know the size of such basins, but I do know they were quite large.

Ans. X Int. 31. It certainly was benefited by said basin, it was allowed to settle, but I do not know the extent.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. I do not know.

(2081)

Exhibit A to Deposition of
F Stumb taken Feb 19/904
J. R. Short Notary

Ans. X Int. 34. I can only answer that by saying I have made no observations as to that.

Ans. X Int. 35. To answer this question it would be necessary to make a thorough survey of the plant, which I have not made. I therefore cannot answer the question.

F. STREUBY.

STATE OF MISS., }
Warren County. }

Sworn to and subscribed before me this 17th day of February, 1904.

[SEAL.]

J. H. SHORT,
Notary Public.

(Here follows diagram marked page 308½.)

309 Answers of E. S. Butts.

Deposition of E. S. Butts to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant *In re* Vicksburg Water Works Company *vs.* Mayor & Aldermen, City of Vicksburg, taken before J. H. Short, notary public, on Friday, February 19th, 1904.

Ans. Int. 1. E. S. Butts, over 21, president of the American national bank; residence Vicksburg, Mississippi.

Ans. Int. 2. It was constructed about fifteen years ago, or about 1889.

Ans. Int. 3. From the Mississippi river, and that has been the only source since its construction.

Ans. Int. 4. Cistern water.

Ans. Int. 5. I have used the Mississippi River water at my home for baths, and for cooking, but have not used it for manufacturing purposes.

Ans. Int. 6. I have had no occasion to use it except that which was obtained from the hydrants of the Vicksburg water works.

Ans. Int. 7. It has always been recommended as being wholesome.

Ans. Int. 8. As stated, I have had no experience in manufacturing purposes, and have only used it in bath and kitchen purposes, and found it very satisfactory for those purposes.

Ans. Int. 9. Its sanitary condition will compare favorably with any other of these towns and villages. The health is very good, and as good since the construction of the water works, as it ever was before.

Ans. Int. 10. I know nothing further than I have stated.

310 Answers of E. S. Butts to Cross-interrogatories.

Ans. X Int. 1. I do not know.

Ans. X Int. 2. It does.

Ans. X Int. 3. I cannot say.

Ans. X Int. 4. I cannot say.

Ans. X Int. 5 I have no personal knowledge of this. I do not know that the water of the Yazoo river is generally considered bad. I do not know whether, if used for drinking purposes, it is liable to produce malarial diseases; I have never heard that it did.

Ans. — Int. 6. I do not know the distance, but there is a large sewer that empties into the Yazoo River canal just on the northern limits of the city of Vicksburg. As stated, I do not know the distance the mouth of that sewer is from the intake pipe of the water works plant.

Ans. X Int. 7. I could not tell the size. I think it runs from the

Piazza hotel; it runs along Washington street about six squares but I do not know the dimensions.

Ans. X Int. 8. I do not know the extent of the sewerage carried by this sewer. I do not know to what extent the water closets of the business houses discharge into this sewer. I do not know whether any or all of the water closets from the public buildings named in the question, are discharged into the sewer.

Ans. X Int. 9. It was constructed long before the water works plant was built; I think it was built in 1879.

Ans. X Int. 10. It used to discharge about *about* ten miles above the intake pipe of the water works, but now it comes through a canal very near the intake pipe, but I do not know how near. I mean by "very near," within two or three hundred yards.

Ans. X Int. 11. I have no knowledge of what opportunity for sewerage contamination has been occasioned by the change above referred to.

Ans. X Int. 12. The drainage is to the west, and discharges into the Yazoo River canal, and Mississippi river about two miles of the intake pipe of the water works.

Ans. X Int. 13. I have no knowledge of the extent of the contamination, and I do not know anything about whether the Yazoo River water is good and wholesome, and fit for domestic purposes.

Ans. X Int. 14. I do not know.

Ans. X Int. 15. It was usually the character of the Mississippi River water to be quite muddy, but it is good for ordinary purposes, and I consider it wholesome, and drink it at places.

Ans. X Int. 16. Well, it is a very nice, clear water, and it is pleasant to the taste, and drink.

Ans. X Int. 17. They established this filtration plant, as near as I can remember, in May or June, and I do not know of but one occasion and that was for one day, or a short duration, in which they did not furnish filtered water.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. In answer to the first part of this question, I say I do not know. It was slightly muddy in appearance, but had no odor; there was no more mud present than if it had been taken directly from the Mississippi river, as far as I can tell.

Ans. X Int. 20. I have made no tests nor examinations.

311 Ans. X Int. 21. The water is as good as any Mississippi River water.

Ans. X Int. 22. I always considered it free from contamination, or sewerage and always considered it fit for all purposes, for domestic and manufacturing uses.

Ans. X Int 23. I do state that it is apparently free from sewerage.

Ans. X Int. 24. I do not know of any contamination, and I have no reasons to believe that there is any.

Ans. X Int. 25. I have considered it wholesome, and used it as previously stated.

Ans. X Int. 26. The only objection that I have ever had with this water, was, that it was muddy.

Ans. X Int. 27. I have made no tests or examinations of this kind, in its original state as taken from its original source of supply, and have no knowledge of uses not coming under my examinations or tests.

Ans. X Int. 28. It is not falling short, or failing to meet the requirement for all domestic uses, or manufacturing purposes.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. Said company did maintain settling basins at its pumping station, and pumped the water from its source of supply into said basins before it furnished it to its consumers. I do not know the size or capacity of these settling basins, or how long the water was allowed to remain in them before being pumped for the use of consumers.

Ans. X Int. 31. Naturally it would be better, because it would permit the sediment to fall to the bottom.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. I did not filter the water furnished me, nor treat it in any other way.

Ans. X Int. 34. I do not know of any such city, town or village referred to.

Ans. X Int. 35. I know nothing of the details of the water works plant, or of the manner of pumping the water, either before the installation of the filter, or since the installation of the filter, in fact, I know nothing of its manner of operation at all.

E. S. BUTTS.

COUNTY OF WARREN, }
State of Miss. }

Sworn to and subscribed before me, this 19th day of Feb'y A. D. 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

312 Answers of J. B. Smith.

Deposition of J. B. Smith in answer to interrogatories and cross-interrogatories propounded by attorneys for plaintiff and defendant in the case of Vicksburg Water Works Co. *vs.* Mayor & Aldermen City of Vicksburg, taken before J. H. Short, notary public, on Friday, February 19th, 1904.

Ans. Int. 1. J. B. Smith, age 43, residence Vicksburg, Mississippi, occupation plumber and contractor.

Ans. Int. 2. The water works plant in the city of Vicksburg was turned over to the city in 1889.

Ans. Int. 3. It receives its source of supply from the Mississippi

river, I have never heard of any other source of supply. It has never had any other source of supply.

Ans. Int. 4. I drink the river water lately. Up to about four years ago I used cistern water.

Ans. Int. 5. I use it at my home for bathing, and washing clothes, and in the kitchen, in fact, for all domestic purposes. Up to a few years ago I had a boiler in use in my shop, in which I used no other water by the Mississippi River water, obtained from the hydrants of the Vicksburg water works.

Ans. Int. 6. I used it at my home for all domestic purposes, and in my shop, as above stated, and obtained the same from the hydrants of the Vicksburg Water Works Company.

Ans. Int. 7. Well, I consider it better than cistern water, or I would not drink it. The steamboatmen all use it, would not use anything else. I think the majority of people consider it favorably.

Ans. Int. 8. From my experience and knowledge of the water, and the character of it, it is wholesome, in my opinion. I have always found it all right for a boiler, never had any trouble with it.

Ans. Int. 9. I cannot answer this question positively, because I have never examined statistics, but I think that on the whole, the people of Vicksburg are very healthy, and I do not think there is as much sickness now, as there was before the construction of the water works plant.

Ans. Int. 10. I do not.

313 Cross-interrogatories, J. B. Smith.

Ans. X Int. 1. I think the distance above referred to is hardly half a mile.

Ans. X Int. 2. It does, yes, the same side, both on the east side of the Mississippi river.

Ans. X Int. 3. I do not know anything about that.

Ans. X Int. 4. I cannot say anything about that.

Ans. X Int. 5. I do not know anything about the country through which the Yazoo river passes. I do not know that the Yazoo River water is generally considered bad, and I do not know anything about it producing malarial diseases when used for drinking purposes.

Ans. X Int. 6. Yes, there is a sewer pipe just about two miles above the intake pipe of the water works company.

Ans. X Int. 7. It is about seven or eight feet in diameter, and it is about seven blocks long.

Ans. X Int. 8. I think there is about, between four and five hundred water closets empty into or are connected with the Washington Street sewer, and a great number of urinals, wash basins, and bath tubs connected with the said sewer. It is a fact that nearly all of the business houses on Washington street have their closets discharge into said sewer, and it is also true that the offal and excrement from water closets, and other sources, from the Washington hotel, Carroll

hotel, Piazza hotel, Jewish Club, Elks Club, opera house, jail, St. Francis Xavier's college, Vicksburg sanitarium, city hospital, United States post-office, and practically all the dwellings on South street from Adams street, west to Washington street, drain into and discharge into the said sewer.

Ans. X Int. 9. The sewer was there as a gutter long before the water works was constructed. I am not sure, but to the best of my recollection the said sewer was constructed about 1870.

Ans. X Int. 10. At the time of the construction of the water works plant, the Yazoo river emptied into the Mississippi river at Young's point, a distance of several miles above said city, now, by reason of the construction of the Yazoo canal, the said Yazoo river empties into the Mississippi river at what is known as the Lower landing, at Vicksburg, only about half a mile above the intake pipe of the said water works plant.

Ans. X Int. 11. It would seem to me that it would drive the sewerage right under, or into the pipes.

Ans. X Int. 12. The general direction of such drainage may be called westward, but I think that it is almost divided, a greater portion of it going down through Stouts bottom. That that drains west, is within a distance of two miles, I should say, of the intake pipe.

Ans. X Int. 13. I have no knowledge of the extent of the contamination referred to.

Ans. X Int. 14. I think they get some of both, of course it looks like, as the canal being down there, it would be most Yazoo River water. Personally I do not know, but I have always heard that the Yazoo River water is unhealthy.

314 Ans. X Int. 15. It was muddy water, but I considered it pure; I used to drink it all the time.

Ans. X Int. 16. Well, it is mighty pretty water to my knowledge, what I have seen of it. I consider it perfectly healthy and pure.

Ans. X Int. 17. As well as I can remember, there has only been one breakdown since the installation of the filtration plant, when the water was furnished to the consumers direct from the river, in its muddy state. As nearly as I can remember, the period during which the said muddy water was furnished, lasted four or five days.

Ans. X Int. 18. I do not know.

Ans. X Int. 19. To the first part of this question I answer that I do not know, at one time it was pretty black and muddy, but I do not remember any scent or odor. From its appearance I would not judge that it was charged with more mud than if taken directly from the river.

Ans. X Int. 20. I have made no tests or examinations, other than simply looking at the water, during the course of my business.

Ans. X Int. 21. It is just the ordinary river water, varying according to the different stages of the river.

Ans. X Int. 22. I do not know whether the water as taken and used by the company is free from sewerage and contamination, or

not, and I do not consider it good for all purposes of domestic and manufacturing consumption in its original state, before it is treated in any way, or passed through the filter.

Ans. X Int. 23. I do not know whether it is free from sewerage. I have no reasons for refusing to answer.

Ans. X Int. 24. I do not know whether it *it* free from contamination or not. I do not know whether it is pure or not, with all this sewerage running into the Yazoo river.

Ans. X Int. 25. Well before the Yazoo canal emptied into it, I used to drink water right out of the plant, without filtering it in any way, but now, I do not care to drink river water as taken from the pipes without it being filtered.

Ans. X Int. 26. I think that it has fallen below the standard, because I fear that the sewerage that empties from the Washington Street sewer into the Yazoo river, contaminates the source of supply.

Ans. X Int. 27. I have never put it to any tests, and I have no such knowledge.

Ans. X Int. 28. I do not think the water is pure, because of the contamination of the sewer above referred to.

Ans. X Int. 29. I do not know.

Ans. X Int. 30. I think they do maintain settling basins. I do not know the size of the basins, and I do not know how long the water was allowed to remain in there.

Ans. X Int. 31. Why of course the water was benefited, and improved by allowing it to remain in the settling basins.

Ans. X Int. 32. I do not know.

315 Ans. X Int. 33. At my shop, where I used the water for drinking purposes, we had a small filter. The water we used in the boiler was not filtered. We did not treat the water in any other way.

Ans. X Int. 34. I never did.

Ans. X Int. 35. I do not know anything of the plant, I have only been down there once or twice in my life, and never made any examination of said plant.

J. B. SMITH.

STATE OF MISS., }
County of Warren. }

Sworn to and subscribed before me, this 19th. day of Feb'y.

J. H. SHORT,
Notary Public.

[SEAL.]

316 Deposition of Charles Linstrom, Taken at Vicksburg, Miss., Feb'y 25th, 1904.

Answer to interrogatory No. 1. My name is Charles Linstrom, age 56, residence Vicksburg, Miss., and occupation master mechanic of the Y. & M. V. Ry.

Ans. to Int. 2. I don't know exactly; sometime previous to 1890.

Ans. to Int. 3. From the Mississippi river; always gotten its water from that source.

Ans. to Int. 4. I have been in the habit of drinking waterworks water at the shops, and cistern water at home. I now also use the waterworks water at home, since I moved in my new house.

Ans. to Int. 5. Yes, I use it at my home for domestic purposes, and use it at the Ry. shops altogether for making steam, and drinking purposes also.

Ans. to Inter. 6. We have used the Mississippi River water both for making steam in the boilers in *our* the various shops here at Vicksbirg, also for all the locomotives running out of here. Previous to the construction of the waterworks here we pumped Mississippi River water with our own pump and through our own pipes, and the supply was obtained from the Mississippi river, direct from a point at the lower landing of what is known as Klienstown.

Ans. to Int. 7. The majority of those people who know anything about the matter and have used it say that Mississippi river, say that it is the purest and mpst healthy water to be had.

Ans. to Int. 8. My experience has been that as far as wholesomeness is concerned, it is all right. It is good water for making steam.

Ans. to Int. 9. From what I know of the matter, I think that the city of Vicksburg is equally as healthy as any city in the State of Mississippi, or of Louisiana. I think it is as healthy now as before the waterworks plant was constructed.

Ans. to Int. No. 10. I don't know of anything.

317 X 1. I should judge it is about one half of a mile.

X 2. Yes.

X 3. I would say yes.

X 4. I could not say, I don't know? I have never made any analysis of it.

X 5. I am not familiar with the country up there. I don't know whether it is considered bad, nor whether it is liable to produce malaria diseases.

X Int. 6. I know there is a sewer that enters into the Yazoo River canal at about the distance stated.

X 7. I don't know anything about the dimensions of this sewer.

X Int. 8. I do not. I am not familiar with the amount of sewerage emptied into this sewer, and have no knowledge of what houses or public buildings have their water closets or bath tubs connected with the said sewer.

X 9. The sewer was constructed long before the waterworks plant It was built before I came to this town.

X 10. When the waterworks plant was built, the Yazoo river emptied into the Mississippi river at a point several miles north of the intakepipe of the waterworks company, now, since the construction of the canal the water from the Yazoo river enters the Mississippi river only about a half a mile north of the intake pipe.

X No. 11. I don't know what effect this change would have on the water pumped up by the water w-rks company,

X Int. 12. The general direction of the surface drainage from the city of Vicksburg is generally westward from said city, into the Yazoo canac and Mississippi river, and most of it is emptied into these two streams within two miles of the said intake pipes.

X Int. 13. I don't know the extent of contamination of the Yazoo River water by the sewerage, and I don't know whether the water from that river is good and wholesome, and fit for domestic uses or not.

X Int. 14. I don't know whether any of the water taken up by the water works company is Yazoo River water or not. I consider the water now furnished by the water works company good and wholesome, and fit for domestic purposes.

X Int. 15. The water used before the installation of the
318 filtration plant. I do not consider as good and wholesome as the water now furnished, on account of the mud that was then present in the water.

X Int. 16. The water furnished since the installation of the filter plant is good and wholesome, and pretty good water.

X Int. 17. I don't think I have any recollection of it, except probably once or twice, and it lasted only a very short time. I mean by a very short time, a day, or about twelve hours.

X Int. 18. I do not know.

X Int. 19. I have no knowledge of this. On the two occasions referred to by me, when unfiltered water was furnished. I do not think that the water was charged with mud, and other insoluble matter in excess of what it was when first taken from the river, and I am quite sure that it had no smell or odor.

X Int. 20. I have made no tests or examinations.

X Int. 21. The quality of the water used by the waterworks company is the Mississippi river, as it changes with the different stages of the river; sometimes, of course, it is muddied than others, according to whether the river is rising or falling.

X Int. 22. I don't know whether it is free from sewe-age conta-ination or not, but personally I consider it good and wholesome and fit for domestic purposes, otherwise I would not allo*y* my family to use it. As far as I can see, the water is as good before it is treated, as afterwards, of course, the water is much prettier and clearer after being treated.

X Int. 23. I do not know, I have never analyzed the water. I have no reason for being unwilling to say why it is not free from sewerage.

X Int. 24. As previously stated, I don't know that it is free from contamination, and have no reason for not being willing to so state. I have no knowledge of the water being contaminated.

X Int. 25. I have stated that I do consider it good and wholesome.

X Int. 26. I do not consider that it has fell short of such standard, either for domestic or manufacturing purposes.

X Int. 27. I have not put it to any tests or examinations, and I

don't know anything about the matter spoken of in the last part of this question.

X Int. 28. I have not stated in any of my previous answers that the water falls short of such standard. If I have ever found
319 any objection to it, it is because sometimes it has not been as clear as I should like it, for drinking purposes; this, however, effected the appearance of the water rather than the quality.

X Int. 29. They have settling basins, but I have no knowledge of them ever having used any chemicals.

X Int. 30. It did use settling basins, but I don't know the size of them, and neither do I know how long the water was allowed to remain in the settling basins.

X Int. 31. The only benefit they would get from it would be to get the sediment or to get the mud out of the water, and render it clearer.

X Int. 32. I don't know anything about that.

X Int. 33. We used the water just as we got it from the water works.

X Int. 34. No, I could not say that I do.

X Int. 35. I was around the water works a good deal when it was first put in; when the pumps were located on the river bank. I have not been down there since the new pumps were put in. When I was acquainted with the plant, it was necessary to move the pumps with the different stages of the Mississippi river.

CHAS. LINSTROM.

STATE OF MISS., }
County of Warren. }

Sworn to and subscribed before me, this 25th. day of Feb'y 1904.

J. H. SHORT,
[SEAL.] Notary Public.

320 Answers of D. H. Herman.

Answers to interrogatories and cross-interrogatories propounded to D. H. Herman, in the suit of Vicksburg Water Works Co. vs. Mayor and Aldermen City of Vicksburg, taken before J. H. Short, notary public, on the 12th day of February, 1904.

Ans. Int. 1. D. H. Herman, age 61, Vicksburg, Mississippi; proprietor of the garden restaurant.

Ans. Int. 2. The Vicksburg water works plant was constructed sometime about 1887, 1888, or 1889.

Ans. Int. 3. From the Mississippi river, and has done so ever since it was constructed.

Ans. Int. 4. I have been drinking filtered Mississippi water, furnished by the Vicksburg Water Supply Company.

Ans. Int. 5. For domestic purposes altogether, but never for manufacturing purposes; never had any occasion to use it for manufacturing purposes.

Ans. Int. 6. At my home I have used the water from the water works company for bathing purposes, and at my restaurant have used nothing but Mississippi River water, at the bar, on the table, and for general purposes.

Ans. Int. 7. I do. I know it to be good water for drinking purposes, which I have been using it for, and that is all; for cooking and drinking purposes.

Ans. Int. 8. For drinking purposes it is first class; have had no experience in manufacturing purposes.

Ans. Int. 9. I do not know.

Ans. Int. 10. Well, all I can say is this; I would prefer the Mississippi River water as I am getting it now, better than any other water that I know of. I would sooner drink it than any other water that I can get.

321 Answers of D. H. Herman to Cross-Interrogatories Propounded by Defendant.

Ans. X Int. 1. I do not know anything about that.

Ans. X Int. 2. I believe so. From what I have seen, since this channel has been cut, the Yazoo comes right into the Mississippi.

Ans. X Int. 3. I could not say; I never tested that water particularly. Don't know that I ever drank it.

Ans. X Int. 4. I don't know anything about that.

Ans. X Int. 5. I don't know whether it passes over such low country, or not, and I do not know that the water of the Yazoo river is considered bad for drinking purposes. I do not know whether it produces malarial diseases.

Ans. X Int. 6. I know that the Washington Street sewer empties into the Yazoo River canal at the foot of Main street. I don't know anything about how far that is from the intake pipe.

Ans. X Int. 7. I don't know how far up it runs. I know it empties into Main street, but I don't know how far up Washington street it is. I judge about fifteen or twenty feet in diameter. I don't recollect exactly when this sewer was built, and I don't recollect how large it is.

Ans. X Int. 8. I don't know what quantity of sewerage passes through the sewer. There is a great many houses on Washington street that have their water closets connected with the Washington Street sewer, but I don't know how many. I believe that the public buildings named in the question all have their water closets empty into the Washington Street sewer.

Ans. X Int. 9. The sewer was constructed long before, I don't know what year it was constructed in, but I know it was long before. It was constructed before the big yellow fever.

Ans. X Int. 10. At the time that the water works was constructed,

the Yazoo river emptied into the Mississippi river at a point opposite Young's point, about six miles north of the city; the Yazoo river now empties into the Mississippi river thorugh the new Yazoo River canal, at the lower lansing. I do not know how far the mouth is from the intake pipe.

Ans. X Int. 11. I do not know anything about that.

Ans. X Int. 12. As far as I know the general direction of the surface drainage from the city of Vicksburg into the Yazoo River canal, and Mississippi river is westward, but I do not know how far it is from the intake pipe.

Ans. X Int. 13. I have no knowledge of the extent of the contamination of the water of the Yazoo river by the sewerage from the city of Vicksburg and the surface drainage, and I do not know anything about the wholesomeness, and the fitness for use, of the water from the said Yazoo river.

Ans. X Int. 14. I do not know whether the water used by the water works company comes from the Yazoo river or not.

Ans. X Int. 15. I know that the water was good and wholesome, although it was muddy, as far as my judgment went. I have never heard anybody kick about the water.

Ans. X Int. 16. The water is all right, and good and clear in all respects.

Ans. X Int. 17. I could not swear that they have. I believe there was a little break down once, I don't recollect but one break-down, and it was short, and during this time, the water furnished was muddy. I don't know the length of time it lasted.

322 Ans. X Int. 18. I don't know anything about that.

Ans. X Int. 19. I don't know whether the water was contaminated with chemicals, or not, it appeared to me to be muddy, and I did not observe any odor, or scent. I do not think there was more mud than it had before they had the filter in use.

Ans. X Int. 20. I never made any tests or examinations, not before or since.

Ans. X Int. 21. I don't know anything about that.

Ans. X Int. 22. I am not a chemist, and never made any chemical examinations. The water appears to be clear, and I have no fault to find with it. I think it is good; I never analyzed it, or never had it analyzed, but I think it is equally good or better than it would be if taken directly from the river, as far as my judgment goes.

Ans. X Int. 23. I have no reasons for not answering this question, but simply do not know whether it contains any sewerage or not.

Ans. X Int. 24. I have no reasons for not answering this question; I simply don't know. I have not heard of any contamination, or observed any.

Ans. X Int. 25. I have considered it good and wholesome at all times, if not, I would not have used it, but made other arrangements.

Ans. X Int. 26. I never had fault with it, because I had a private filter of my own. I do not know a thing about using it for manufacturing purposes, but I always considered it all right.

Ans. X Int. 27. As stated previously, I have never had any occasion to use this water for manufacturing purposes, but have used it continuously in my restaurant and bar, and have never found any fault with it. I have no knowledge of any tests made by anyone else.

Ans. X Int. 28. I considered it good for all domestic purposes, I do not consider that it fell short of any of its requirements. I never made any chemical analysis of it, though I am unable to say that it does not contain any sewerage. I always considered it good.

Ans. X Int. 29. I do not know anything about the treatment of water.

Ans. X Int. 30. I do not know anything about the operations of the water works company.

Ans. X Int. 31. Well, I do not know. I should think that it would be because if there is any matter in it whatever, it is more than apt to settle.

Ans. X Int. 32. I do not know.

Ans. X Int. 33. Of course, I have been using the water ever since the water works company has been operating here, and I have always filtered my water, have a private filter at my home, always found the water all right from the very fact that it was filtered, and good and wholesome, but I never used any chemicals.

Ans. X Int. 34. I know of no such place. It is a matter in which I have made no inquiries.

Ans. X Int. 35. I have no knowledge of any of the matters or things mentioned in this interrogatory.

DAVID H. HERMAN.

STATE OF MISS., }
County of Warren. }

Sworn to and subscribed before me, this 12th day of Feb'y, 1904.

J. H. SHORT,
Notary Public.

[SEAL.]

322½ UNITED STATES OF AMERICA, }
Western Division of the Southern District }
of Mississippi. }

VICKSBURG WATER WORKS COMPANY }
vs. }
MAYOR & ALDERMEN OF VICKSBURG. }

In pursuance of the foregoing and attached agreement, I, J. H. Short, a notary public in and for the city of Vicksburg in the county of Warren and State of Mississippi, caused to come before me the

aforesaid witnesses: Jacob Voenkle, J. M. A. Breenan, E. S. Butts, D. H. Herman, J. B. Smith, F. Streuby and Charles Linstrom, who being by me duly sworn each for him- deposed and answered the questions and cross questions as hereinbefore set out; the witness named, J. J. Powers was and is ill and not able to testify; the witness named T. L. Flanagan failed and neglected to testify although requested so — do, or was prevented from so doing on account of his business.

Given under my hand and official seal this 29th day of February, 1904.

J. H. SHORT,
[SEAL.] Notary Public in and for the City of
Vicksburg, Warren County, Mississippi.

The above and foregoing has the following indorsement thereon, to-wit: No. 41, Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Depositions of J. B. Smith, F. Streuby, J. M. A. Brennan, E. S. Butts, D. H. Herman, Chas. Linstrom, J. Voenkle. Filed Feb'y 29, 1904, L. B. Moseley, clerk, J. H. Short, D. C.

323 Deposition of M. O. Crumpler.

In the Circuit Court of the United States for the Southern District of Mississippi, Western Division Thereof

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. —.

It is understood that the answers of M. O. Crumpler to the appended interrogatories when made under oath before some officer authorized by the State of Mississippi to administer oaths may be read in evidence on the hearing of the above entitled cause, subject once to objections for irrelevancy and incompetency; notice and commission and all matters of form are hereby expressly waived; the certificate of the officer taking the depositions shall be conclusive evidence of his authority to administer oaths, and formal captions and certificates of such officer *is* expressly waived and the certificate shall be sufficient if it is in the following form:

"Sworn to and subscrived before me, this — day of ——"
and signed by the officer with dates properly filled in.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.

—— ——,
Attorneys for Defendant.

Interrogatories to be Propounded to M. O. Crumpler.

Int. 1. State your name, age, residence and occupation.

Int. 2. If you state your occupation to be the manager of the water works plant in Vicksburg, state when that plant was constructed, if you know?

Int. 3. State, if you know, what was the occupation of S. R. Bullock & Co. and what was the character and kind of contracts they required if any, in the work they undertook and their custom in that connection

Int. 4. If you answer the preceding questions affirmatively, state, if you know, whether they used the same contract adopted by the defendant in this case and if you have an original or duplicate of the ordinance and contract between defendant and S. R. Bullock & Co. showing additions and erasures as it was finally adopted and approved by defendant, please file it with your deposition as Exhibit "A" hereto.

Int. 5. State whether, or not you are familiar with the plans and specifications of said contract, and if you say yes, please state
324 if said plant was constructed in accordance with said specifications and plans or not? What action was taken by the defendant in reference to the plant so constructed, and file herewith certified copies of any proceedings of the city council relating to said work so constructed and mark the same as Exhibit "B" to this deposition?

Int. 6. State whether or not there was any complaint of any kind or character by word or resolution from defendant that the water company did in any manner forfeit or violate or was not carrying out said contract prior to the latter part of the summer of 1900.

Int. 7. State how your company acquired, if it did acquire, any right, title or interest in said water works plant: Answer this question fully, and file herewith any muniments or evidence of title to said water works plant under which your company claims said water works plant, as Exhibit "C."

Int. 8. If your company claims any right to any contract for hydrant rental, and any privileges conferred by the defendant upon S. R. Bullock & Co., please state fully how your company acquired said rights, and file herewith any evidence of writing thereof if your company possesses any, and make the same Exhibit "D" to this deposition?

Int. 9. If you know, state, exactly what was done by the Vicksburg Water Supply Company under the rights, titles and privileges and contracts acquired by deed from S. R. Bullock & Co. which the said S. R. Bullock & Co. acquired from the said defendant, so far as any obligation imposed by said contracts is concerned?

Int. 10. State, if you know, where the water came from which was supplied the city by said Vicksburg Water Supply Co., particularly the character, quality and quantity of said water, and the length of time said water was furnished?

Int. 11. State, if you know, what mechanical devices the Vicksburg Water Supply Company possessed for testing the pressure of water in the mains of said plant, and what was indicated by said devices so far as pressure is concerned.

Int. 12. State who represented your company in making the investigation of the plant here, and the negotiations for the purchase of the water works plant?

325 Int. 13. State if you had any connection with said investigation and negotiations, exactly what you did and exactly what you discovered?

Int. 14. State how your company has been operated since your company acquired the same, under what contract, if any, with the city your company was operating, and what your company did under said contract particularly with reference to the obligations imposed by said contract upon your company. Answer this question fully?

Int. 15. State when was the first time you had any intimation that the defendant was in any manner dissatisfied with the operation of the waterworks plant here?

Int. 16. State whether the city had made default at any time in the payment of its hydrant rentals, particularly before the latter part of the summer of 1900?

Int. 17. State whether any notice was ever served by the defendant by resolution or otherwise, in writing upon the said Vicksburg Water Supply Company, complaining in any manner of its performance of its obligations, under said contract for the supply of water?

Int. 18. State in detail the origin of the controversy between your company, and the city, its progress and all matters connected therewith, filing with your answer copies of any communications or notices served upon you, and copies of any replies thereto, made by you to said defendant?

Int. 19. How does the proceedings which you have related effect your company and its commercial standing and credit?

Int. 20. State in detail, what action, if any, was taken by the defendant under the act of the legislature of the State of Mississippi of March 9th, 1900?

Int. 21. How will the act of the legislature of the State of Mississippi of March 9th, 1900, if made operative and effective by the defendant effect the commercial standing and credit and life of your company?

Int. 22. Has the city of Vicksburg a general sewerage system in operation?

Int. 23. What kind of a sewerage system has the city of Vicksburg and by whom was it constructed?

Int. 24. What effect, if any, did the discharge from the said system have upon the water supply of the city of Vicksburg.

326 Answer this question in full.

Int. 25. If you know, how does the health of the people of the city of Vicksburg compare with the health of the other people

of the other cities in Mississippi and Louisiana of the same size and even of smaller size?

Int. 26. Has the water works company made any recent improvements on its plant? If so, what is the character and extent of said improvements, and the cost thereof, and what induced them to make the said improvements?

Int. 27. State how and when your company obtained the waterworks plant, and the improvements your company made to said plant, if any, since it acquired same, and for what purpose?

Int. 28. Since the initiation of this controversy between the city and your company, what efforts, if any, have been made by the city to discharge its obligations under its contract with your company?

Int. 29. If you state that it violated its obligations under its contract, state the extent of such violation, and its effect upon the commercial standing of your company?

Int. 30. Does the defendant take water from the Vicksburg Water Works Company, and if so, for what purpose and what is the duration of the contract and what does the city pay for the same?

Int. 31. Please state whether or not the water works company has complied with its contracts as to the drinking fountains as stipulated in said contract?

Int. 32. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer?

327 M. O. Crumpler's Deposition.

Answer to interrogatory 1. My name is M. O. Crumpler. Over twenty-one years of age, I reside in Vicksburg, Mississippi. I am manager of the Vicksburg Water Works Company.

Ans. Int. 2. The plant was constructed in 1887 and 1888.

Ans. Int. 3. S. R. Bullock & Company's connection was the construction of the water works plants. They has a printed form or contract in the form of an ordinance which they required to be passed by city councils where they built waterworks plants.

Ans. Int. 4. Yes, they used the same form of contract as was adopted by defendant in this case. I have an original of the contract between the defendant and S. R. Bullock & Company, showing additions and erasures as it was finally adopted, and I file it with my deposition as Exhibit "A."

Ans. Int. 5. Yes, I am familiar with the plans and specifications of the contract; the plant was constructed in accordance with the specifications and plans. The defendant inspected and accepted the plant as having been constructed in accordance with the plans and specifications, and I file a certified copy of the proceedings of the

city council relating to said acceptance and mark it as Exhibit "B" to my deposition.

Ans. Int. 6. There was no complaint of any kind or character by resolution or word from the defendant that the water company had in any manner forfeited or violated, or was not fully carrying out said contract prior to the latter part of the summer of 1900.

Ans. Int. 7. Our company acquired a title to said water works plant and franchise by purchase under a foreclosure sale of the first mortgage bonds, together with a quit claim deed from the Vicksburg Water Supply Company, and I attach copies of the same to my deposition and mark them Exhibits "C" and "D" respectively.

Ans. Int. 8. I have answered this question in my answer to interrogatory No. 7.

Ans. Int. 9. The Vicksburg Water Supply Company constructed the water works plant under the rights, titles and privileges acquired from S. R. Bullock & Company, and S. R. Bullock & Company had acquired these rights, titles and privileges from defendant.

328 M. O. Crumpler's Deposition No. 2.

Ans. Int. 10. The water which was supplied to the city by the Vicksburg Water Supply Company came from the Mississippi river. The water was pumped from the Mississippi river to large reservoirs or settling basins, where it was allowed to settle for about forty-eight hours; then it was pumped to the city for use; in character and quality it was a good wholesome water for private and domestic purposes, and good for manufacturing purposes, and there was an adequate supply for the needs of the city, and its inhabitants. The length of time said water was furnished was about eleven or twelve years, when our company purchased the plant, and the same kind and character of water has been furnished by complainant since it purchased the plant up to May 1st, 1903, at which time our company installed a filter plant.

Ans. Int. 11. The Vicksburg Water Supply Company, as well as the Vicksburg Water Works Company, used a mechanical device known as a recording *guage* to test the pressure of the water they were carrying; this *guage* indicates the water pressure on a chart, showing automatically exactly what the pressure was every hour and minute during the day and night. One chart represents a period of twenty-four hours, then a new chart is put in. I file said charts as Exhibit "E" to my deposition.

Ans. Int. 12. Mr. C. Delafield, a hydraulic engineer of New York city.

Ans. Int. 13. Yes, I was with Mr. Delafield in the investigations and negotiations; we investigated the property for about one week, and we found the physical condition of the property very good, and after inquiry, we ascertained that the city and its inhabitants were

pleased with the operation of the plant, and the kind of water furnished.

Ans. Int. 14. Since our company acquired the plant, it has been operated under the contract with the city granted to S. R. Bullock & Company, and our company has, in every particular, carried out all of the obligations and conditions imposed by said contract.

Ans. Int. 15. The first time our company had any intimation that the defendant was in any manner dissatisfied with the operation of the plant was a short time after the city had held an election to bond the city to buy or build and own waterworks of its own, some time in the latter part of the summer of 1900.

329 Ans. Int. 16. The city had never made default in the payment of city hydrant rental, nor had ever questioned the payment in any manner until after it had fully decided it wanted water works of its own, which was a short time after said bond election in the latter part of 1900.

Ans. Int. 17. No notice of any kind, by resolution in writing or otherwise was ever served upon the Vicksburg Water Supply Company of the non-performance of its obligations under the contract, either as to the supply or as to the quality of the water nor had any ever been served upon our company to this effect. The only notice ever served on us was a resolution passed November 7th, 1900, simply denying that the city had any contract with our company, which I make Exhibit "F" to my deposition; but no notice of complaint has ever been served on us to the effect that our company was not complying with the contract, or any part of it, or that we had violated the contract in any particular.

Ans. Int. 18. The origin of the controversy between the defendant and our company was solely for the reason that the city wanted a water works plant of its own. After the city had held an election which was carried, to own its own waterworks, it resorted to all kinds of methods to harass, annoy and to break up our company financially and otherwise, by passing a resolution stating that the city had no contract with our company, and serving notice upon is to that effect (see Exhibit "F" hereto), and by refusing to pay the city hydrant rental. They also put in a recording *guage* at the Washington fire engine house, and kept the water partly cut off, so that the full pressure could not get to the *guage*, so a low record could be made against us, that the contract might be annulled in that way. When we found that the water was kept partly cut off, we gave them notice in writin*t* that the valve must be kept open wide enough to admit of full pressure, or that the *guage* should be put in charge of the local underwriters of fire insurance, who were disinterested parties. I make a copy of said notice Exhibit "G" to my deposition. The fire chief, Mr. Marks, who was appointed by the city council, and who was directly under the council's

330 control, would not, or did not, open the fire hydrants full so as to get the full pressure when there was fire, and would them claim that the water company did not have full pressure required,

and in this way made the citizens feel unsafe, and caused an unjust prejudice against our company. This performance was continued until all the fire insurance companies in the United States who were doing business in the city, had their representatives come here and investigate the conditions, and after the investigation they appeared before the city council and stated that if Mr. Marks was not removed as fire chief their companies would not insure property in the city of Vicksburg any longer, and finally Mr. Marks was removed. Mr. R. M. Kelly, one of the city councilmen, stated to Mr. Hudson and myself, that the city wanted to get the plant for one hundred and fifty thousand dollars, and that the city council intended to do everything in their power to harass and annoy our company, so as to make us sell at that price, and that we might expect the council to do everything they could to break the contract.

Alderman Smith told me that the city would never buy the plant under the option of the contract because they would not pay as much for it as they would have to pay that way.

Alderman Campbell stated in open session of the city council that he was opposed to building a sewerage system in the coty, for the reason that it would enhance the value of the water works plant.

There was a municipal election held in the city on December 6th, 1900, and the mayor and a majority of the aldermen went before the people on the platform pledging themselves that if elected they were in favor of bringing suit to cancel the contract with the water works company. They stated over their own signature in the newspapers, published in the city, that all proper efforts should be exerted to have the present contract with the water company tested in the court, and if warranted by law, vacated and annulled. They made the people believe that the contract ought to be cancelled, and they have created an unjust prejudice against the water company on that account. Within a few weeks after the election, suit was filed in the chancery court of Warren county, Mississippi, to cancel the contract.

331 Ans. Int. 19. The actions of the city council, as just related, and bringing suit to cancel our contract, has affected our commercial standing and credit to a very great extent, and the unjust prejudice brought about by said political and other actions with the citizens of Vicksburg has been very damaging to us. The attempt to annul our contract by resolution together with bringing suit to annul it, and the general fight that has been made upon us, has been the means of our having to buy material to operate the plant in several instances, C. O. D., or bill of lading attached. It has been the cause of our company having to employ additional council in the city of St. Louis, costing us several thousands of dollars. It has been the means of causing an unjust prejudice against us in the minds of our patrons, a making it much harder to collect what they owe, and in many instances causing us to lose their accounts altogether. It is impossible to tell how far reaching and how damaging such actions are to a company like ours, or to any business con-

cern, but a short time since we had a transaction with a concern in Memphis, Tennessee. They received notice from Dun's agency that if they were interested in the Vicksburg Water Works Company to call at their office; they were then informed that a New York concern had been financing our concern, but had withdrawn and would not do so any longer. It is true that it was a false report, but the damage was just as great. No human mind *had* possibly ferret *bout* and tell how far reaching such actions are upon a company like ours, for it is beyond conception, and especially so with the rapid transit of news in this progressive age.

Ans. Int. 20. The defendant held an election to issue and sell bonds of the city to build or buy a water works plant of it- own under the act of March, 9th. 1900.

Ans. Int. 21. If the act of March 9th, 1900 is made operative and effective by defendant, it will commercially ruin *out* company.

Ans. Int. 22. The city of Vicksburg has not a general sewerage system in operation.

332 Ans. Int. 23 and 24. These interrogatories are answered fully by me in my deposition heretofore taken in this case on this point.

Ans. Int. 25. I do not know how the health of this place compares with other cities in this State and Louisiana.

Ans. Int. 26. The water company has made recent improvements on its plant. One of the greatest improvements is the construction of a complete filter plant to filter all of the water delivered to the city, costing about thirty thousand dollars. The reason we had to put in the filter plant was on account of the sewerage discharges polluting the water a short distance *about* our intake pipe, as stated in my previous deposition, on the sewerage outlet of *from* the city, which the city has recently put into operation; and the further reason that the United States Government has recently changed the course of the Yazoo river, causing it to flow in front of the city of Vicksburg, Mississippi, thereby taking all of the city garbages dump and sewerage discharge directly in front of our intake pipes, which is fully set out in my former deposition on the sewerage question.

Ans. Int. 27. Our company bought the plant under the foreclosure sale of the first mortgage bonds in August, 1900.

Ans. Int. 28. None, it has paid the city hydrant rental only under the mandate of the court, and has continually tried to break the contract instead of carrying out its obligations.

Ans. Int. 29. This question has been answered in interrogatory 19.

Ans. Int. 30. Yes, the defendant takes water from our water company for the purpose of domestic, fire protection, flushing gutters, public schools, all public buildings of the city and eight public drinking fountains for man and beast, and pays seven thousand seven hundred dollars for the public purposes per annum. The duration of the contract is for thirty years from November 19th, 1886.

Ans. Int. 31. Yes, the water company has complied with its con-

tract as to the eight public drinking fountains as stipulated in the contract, and in all other respects

333 Ans. Int. 32. Our company has to use a great deal more coagulants to filter and purify the water than it would if the sewerage discharge was not let out at a point above our pumping station, thereby making it cost a great deal more to operate the filter plant. A great many of our patrons have told me they felt squeamish about drinking and using the water on account of the sewerage outlet above the point where we get our water, notwithstanding we were now filtering it, stating that they did not think we could make it a clean water, and it keeps other parties from becoming patrons of our water company. It is a very great damage directly and indirectly to our company for the city to permit and allow the storm sewer along Washington street to be connected up with water closets in the most thickly settled part of the city, which has its outlet above our intake pipe. The city's allowing said water closet connections to said storm sewer had all been done since the water plant was built, and its pumping station located. No water closets of any kind were connected to the storm sewer when the water works plant was built, and it has only been in the past few years that water closets have been allowed to be connected with said storm sewer. Our company knew nothing of said water closet connections to said storm sewer until after we had purchased the plant. It is getting worse every day by more closets being connected whenever any one desires to do so, although against our protest. The city puts all its garbage and dump, consisting of dead animals, and other matter from the city, above our intake pipe, and if these conditions are continued it will financially ruin our company by keeping citizens from using water, they knowing these conditions exist. The hydraat rentals and rates names in the contract between the city and the water works company, and regulations as per Exhibit "H," a part of this deposition, are reasonable, and I have examined the city records to ascertain if there were any minutes, resolutions or ordinances of any kind, complaining of or notifying the water company or any of its predecessors, that the contract between the city and S. R. Bullock & Company was not being complied

334 with in any particular, prior to November 7th, 1900, and I find there is none; and the city clerk also tells me that there is nothing prior to that time.

M. O. CRUMPLER.

Sworn to and subscribed before me this 29th day of February 1904.

J. H. SHORT,
Notary Public.

[SEAL]

335 Cross-interrogatories and Answers of M. O. Crumpler.

X Int. 1. Mr. Crumpler, can you state the time, or about the time when you first became connected with the water works plant in this city?

Ans. On August 15th, 1900. That was when we took possession. The purchase was made on August 8th, 1900.

X Int. 2. What company then owned and was operating the plant?

Ans. Prior to that time, the Vicksburg Water Supply Company.

X Int. 3. Then your company purchased the water system here from the Vicksburg Water Supply Company on August 8th, 1900, and entered into possession of the same on August 15th, 1900?

Ans. We purchased the first mortgage bonds, together with the accrued interest thereon prior to that time, but the foreclosure sale was not made until August 8th, 1900, and we took possession on the 15th.

X Int. 4. From whom did you purchase the first mortgage bonds with the accrued interest.

Ans. From the First National Bank of New York City.

X Int. 5. From whom did you purchase the plant, under foreclosure sale?

Ans. From the Farmers' Loan and Trust Company, trustee in the mortgage.

X Int. 6. Have you a copy of any memorandum or bill of sale issued to you by the First National Bank of New York for the bonds and accrued interest upon the same?

Ans. Yes, sir, I have.

X Int. 7. I will ask you to attach the original or a copy of the same, and make profert of the original on the trial of this cause, to your deposition?

Ans. The purchase of the bonds and accrued interest was a private matter entirely, and I therefore decline to produce the original or a copy.

X Int. 8. You state that you bought the ppant under a foreclosure sale? Have you a deed of conveyance or bill of sale?

Ans. I have already made the deed an exhibit to my original deposition in this cause.

X Int. 9. The sale was made August 8th, 1900?

Ans. Yes, sir.

336 & 337 X Int. 10. And the Vicksburg Water Supply Company turned the property over to you August 15, 1900?

Ans. Yes, sir.

X Int. 11. Do you know whether the Vicksburg Water Supply Company had any other property or not?

Ans. Not that I know of?

X Int. 12. Do you know whether the Vicksburg Water Supply Co. carried on or transacted any other business than supplying water to

the mayor and aldermen of the city of Vicksburg, and to the inhabitants of the said city, or not?

Ans. No other that I know of.

X Int. 13. Did you obtain from the Vicksburg Water Supply Company direct any other bill of sale for any other property than that described in the foreclosure conveyance or sale?

Ans. Not that I know of. We took a quit claim deed from them on October 8th, I think, which is Exhibit "—" to my deposition, which shows what conveyances there were in there. In other words, it speaks for itself.

X Int. 14. The quit claim deed, then, was the only purchase made by you directly from the Vicksburg Water Supply Company?

Ans. Yes, sir.

X Int. 15. I notice that you have said "we" all along. I will ask you to explain what you mean in the answer?

Ans. I mean the complainant, The Vicksburg Water Works Company.

X Int. 16. That was a corporation, existing under the laws of the State of Mississippi, was it not?

Ans. Yes, sir.

X Int. 17. Has that company continued since August 15th, 1900, to own and operate a waterworks system in this city?

Ans. Yes, sir, up to a few months ago, when a transfer was made to the City Waterworks and Light Company.

X Int. 18. The City Waterworks and Light Company then, is a corporation and now owns and is now operating the waterworks plant and system in this city?

Ans. It is.

X Int. 19. Is the City Waterworks and Light Company a corporation organized under the laws of the State of Mississippi, or under the laws of some other State, and if under the laws of some
338 other State, what State?

Ans. It is under the laws of South Dakota.

X Int. 20. What connection, if any, has the Vicksburg Water Works Company now with the property and management of the water works system now engaged in supplying water to the defendant and inhabitants of the city of Vicksburg?

Ans. None.

X Int. 21. It has parted with all of its interest then in the plant that is now being used to supply water to the city of Vicksburg and its inhabitants.

Ans. Yes, sir.

X Int. 22. It is not now the owner of the franchise or the contract originally made with S. R. Bullock & Company to supply water to the city of Vicksburg and its inhabitants?

Ans. It is not.

X Int. 23. Mr. Crumpler, are you familiar with the plant or machinery and appliances now being used to supply water to the defendant City of Vicksburg and its inhabitants?

Ans. I am.

X Int. 24. Now, in reference to the mains used in supplying the water, I will ask you how many miles of mains are now in use by the present company in supplying water to the city of Vicksburg?

Ans. That is a private matter. I will answer how many there were at the time of the original construction. When the plant was originally constructed, there was 12400 feet of sixteen inch pipe; 4220 feet of eight inch pipe, and 59930 feet of six inch pipe.

X Int. 25. Was there any four inch pipe then being used by the said company or not?

Ans. I think there has been a little four inch pipe put in since

X Int. 26. Mr. Crumpler, you know, but decline to say, how many feet of sixteen inch pipe are now in use by the City Light and Water Company?

Ans. I do.

X Int. 27. I understand that you know, but decline to state, how many feet of eight inch pipe are now in use by the said City Water Works and Light Company?

Ans. Yes, sir.

339 X Int. 28. You know, and decline to state, how many feet of six inch pipe and how many feet of four inch pipe, and how many feet of ten inch pipe and how many feet of twelve inch pipe is now in use by the City Water Works and Light Company.

Ans. Yes, sir.

X Int. 29. I will ask you to describe minutely the machinery and pumping apparatus at the pumping station of the City Water Works and Light Company now in use. Give the number and capacity of the boilers, the engines, now in use and the number and capacity of the pumps now in use, and whether or not the same are duplicate or single.

Ans. There are two duplex compound condensing engine pumps, manufactured by the Dean Steam Pump Company of Holyoke, Massachusetts installed in the engine house of the pumping station. The size of these two pumps are fourteen inches by twenty-six inches by fourteen by eighteen inches. They are so constructed that they can be operated separately or together, and the capacity of each is about two and a quarter millions of gallons every twenty-four hours, and each has a condenser connected to it. The battery of boilers consists of four, three of them being the size of sixty inches in diameter, sixteen feet long. The other one is seventy-two inches in diameter by twenty-feet long. The total horse power of the said boilers is about four hundred.

X Int. 30. How long has that plant been up to that standard if you know?

Ans. There are two boilers installed when the plant was first built. In 1896 or '7 another boiler of the same size was put in. In 1903 the largest boiler mentioned was put in.

X Int. 31. I will ask you how long the pumps have been up to their present standard?

Ans. The pumps are just as they were when they were originally installed in the pumping station.

X Int. 32. There has never been any change made, then, in the pumps?

Ans. I will explain that the pumps are so made that smaller plungers and bushing can be installed in the water end of the pump. And there was a time when the plungers and bushings in the pumps was operated with twelve inch plungers and bushing instead of fourteen inch. But even under those conditions the capacity of the pumps was equal to the two millions gallons per day.

340 X Int. 33. I will ask you, Mr. Crumpler, what is the source of supply of the water used by the company. Where do you get your water from?

Ans. From the Mississippi river.

X Int. 34. Has that been the case ever since the contract was entered into with Samuel R. Bullock & Co.?

Ans. Yes, sir.

X Int. 35. There has been no change, thence, since the contract was first made, as to the source of supply of the water?

Ans. The pumping station is exactly where it was when it was originally built.

X Int. 36. And you have gotten your water from the same place all the time?

Ans. Yes, sir.

X Int. 37. How far is your intake pipe below and south of the southern limits of the city of Vicksburg?

Ans. I think something like three fourths of one mile.

X Int. 38. And is it not due west of, or opposite the village of Speed's Addition?

Ans. I am under the impression that we are now in the city of Speed's Addition. I don't know exactly where the limits are.

X Int. 39. When your water works system was first constructed did the Mississippi river flow by the city of Vicksburg or not, or do you know?

Ans. I do not know, I suppose it was where it is now.

X Int. 40. There was a time, however, was there not, when the Mississippi river flowed right by the city of Vicksburg?

Ans. I understand so, from talk, not that I know of myself.

X Int. 41. But for some years prior to the purchase of the water works plant by the Vicksburg Water Works Company, was it not a fact that the Mississippi river did not flow by the city of Vicksburg, but that there was an old bed, or channel of the said river extending up in front of the city of Vicksburg?

Ans. I understand these conditions to be true, not that I know personally of those matters.

X Int. 42. Since the purchase of the said plant by the
341 water works company, is it not a fact that the United States Government has changed the outlet of the Yazoo river so as

to cause it to flow in front of the city of Vicksburg along the old channel of the Mississippi river, and to empty into the Mississippi river a short distance north of the intake pipe of your plant?

Ans. Yes, sir. this is a fact.

X Int. 43. About what time was that change made?

Ans. In the latter part of 1902, or the first of 1903. That was when the actual opening took place. Construction was in progress for a year prior to that.

X Int. 44. Since that time, is it not a fact that the Yazoo river has been pouring into the Mississippi river at a point on the same side of the Mississippi river that your intake pipe is located, and within half a mile above it?

Ans. Yes, sir, that is a fact except as to the distance, which id not far from right.

X Int. 45. Do you know whether or not your intake pipe takes in any of the water from the Yazoo river?

Ans. It would be impossible for me to tall whether they do or not. Certain parties claim that there is an eddy there and takes the water up the Mississippi river to a point known as West pass, and there it goes out into the Mississippi river, and whether or not we get any of the Yazoo River water, I do not know; but I take it for granted that the natural results would be that we would get some.

X Int. 46. Have you made any test or examination in regard to eddies and what course the Yazoo water takes after emptying into the Mississippi river.

Ans. I have not.

X Int. 47. Have you had any such test or examination made?

Ans. I have not.

X Int. 48. Of your own knowledge, then, you know nothing of the eddy or eddies of which you have been speaking?

Ans. Nothing except hearsay.

X Int. 49. Did you make any test of the water in your basins—any chemical test or examination of such water or have it done prior to the time the Yazoo river was so changed so as to empty at its present outlet?

342 Ans. No, sir, we did not.

X Int. 50. You have had such examination made since then, have you not

Ans. Yes, sir.

X Int. 51. I will ask you who made such examinations for you?

Ans. Prof. Metz, of New Orleans.

X Int. 52. Where did you get the samples of water you gave him for analysis?

Ans. Prof. Metz came here himself and got samples of water.

X Int. 52. Did he analyze the samples of water before the same was in any way treated with chemicals or otherwise, and before the same was passed through your filter?

Ans. Yes, Prof. Metz collected his samples on April 23 1903, and our filter plant was then being constructed and was not completed

until May 1st, 1903, and none of the samples which Prof. Metz collected had in any case been treated with chemicals or had passed through the filter plant.

X Int. 53. Have you the results of his examination?

Ans. Yes, sir.

X Int. 54. Do you know whether that result of examination was correct or not?

Ans. Only from what he states.

X Int. 55. I will ask you to append his report of the water taken and examined by him on said date to your deposition as an exhibit.

Ans. That is filed with Prof. Metz' deposition in this case.

X Int. 56. Mr. Crumpler, I will ask you to give a minute description of your apparatus, machinery, ways means, and appliances for obtaining and lifting water from the Mississippi river, and transmitting the same to your settling basins.

Ans. We consider that as a private matter as to how we get the water from the river into the settling basins, for the reason that there was nothing of the kind mentioned in the contract between defendant and S. R. Bullock & Company, or their assigns; but, notwithstanding that I will give a detailed description as to how we get the water from the Mississippi river to the settling basins. We have two Worthington duplex pumps that are located on the bank of the river, which are connected with steam from the boiler rooms, and which has a discharge pipe from the pumps into the settling basins. We are also at present installing in addition to this,
343 a centrifugal pump and engine down in a shaft of forty feet deep in the engine house with the proper connections out from the bottom of the shaft to the river. The capacity of this pump is three millions of gallons per day. We intend to keep the two pumps on the river bank already referred to as an auxiliary, and by this method we have two distinct systems of getting water from the river into the settling basins. They can be operated together or separately, and the two pumps on the river bank can be operated together or separately.

X Int. 57. How many lines of pipe have you at present from your settling basins to the Mississippi river, for the purpose of obtaining a supply of water?

Ans. We have three section pipes and one discharge pipe.

X Int. 58. By one discharge pipe you mean that you have one pipe from the engine which you are now maintaining on the bank of the river to the settling basins. Is that correct?

Ans. The pumps on the river have separate discharge pipes up to the top of the bank of the river, where they are connected by a "Y" shaped connection to one pipe, which is a larger pipe.

X Int. 59. What is the size of the discharge pipe from the point where the two pipes come together to the settling basins?

Ans. Twelve inches.

X Int. 60. What is the size of the pipes from the fork to the pumps?

Ans. One is twelve inches, one is ten inches, and one is eight inches.

X Int. 61. What is the size of the pipe from the fork in the discharge pipe to the pumps now in use—the two that are on the river?

Ans. One is eight inches, and the other is ten inches. The one in the well is twelve inches.

X Int. 62. You are not using the one in the well as yet?

Ans. It has not been started up yet.

X Int. 63. You never have used the one in the well up to now?

Ans. We are now installing it.

X Int. 64. It has never been used up to the present time?

Ans. Not yet.

X Int. 65. What is the capacity of the two pumps you have on *eht* river bank now in use, in gallons per twenty-four hours?

Ans. The capacity of either one of the pumps is about two
344 million gallons each. I will explain. When I say "about"—the pumps can be run at a speed varyong from twenty to one hundred strokes per minute, and of course the faster the pump is run, the more water is delivered We only run the pumps fast enough to supply the demand as the occasion arises. One is operated at a time, except in cases where we have accident, then we operate them together.

X Int. 66. Will you tel- us the make and size of these pumps?

Ans. They are manufactured by Henry R. Worthington, of Brooklyn, New York, who is recognized as one of the highest standard of pump manufacturers. The sizes are as follows: One is nine inches by thirteen, and one half inches by ten inches; the other one is ten inches by ten and one fourth inches by ten inches.

X Int. 67. I will ask you what you mean by the first dimension.

Ans. That means the steam cylinder is nine inches in diameter.

X Int. 68. What do you mean by thirteen and one half inches?

Ans. That is the size in diameter of the plunger of the water end.

X Int. 69. And the ten inches is the length of the -troke?

Ans. Yes, sir.

X Int. 70. Now, then, the dimensions given for the two engines are taken in the same way?

Ans. Yes, sir.

X Int. 71. That is, the first dimension is the diameter of the cylinder in the steam end of the pump, the second dimension is the diameter of the plunger in the water end of the pump, and the third is the length of the stroke?

Ans. Yes, sir.

X Int. 72. I understood you to say that these pumps are capable of one hundred strokes per minute?

Ans. They can be run up to that rate, but we never have run them at that.

X Int. 73. I will ask you at what rate of speed is it practicable to run them?

Ans. Eighty five or ninety.

X Int. 74. Have you calculated the capacity of the pumps at ninety strokes per minute?

Ans. I have not.

X Int. 75. So when you say that the capacity of each one is approximately two millions gallons, that is an estimation on
345 your part, and not the result of an actual calculation.

Ans. We arrive at that more definitely from knowing how much water we pump to the city, and from what we know how the river pumps were running. I will state this: That is you desire, I will make the calculation as to how many gallons it would furnish running at ninety strokes per minute.

X Int. 76. Is it not susceptible of exact calculation?

Ans. It is.

X Int. 77. From the data which you have given above?

Ans. It is, except as to slippage. I mean by "slippage" that water that may waste or pass back between the plunger and the bushing.

X Int. 78. That, however, would go to diminish the amount of water?

Ans. It would.

X Int. 79. If you have any books or tables showing the workings capacity of the description of the pumps given above, will you furnish the stenographer the capacity of these pumps, running at ninety strokes per minute?

Ans. I will. After examining the books and tables giving the capacity of different size pumps running at ninety strokes per minute, *and* find that a duplex pump 9 x 13½ x 10, will deliver 3,208,320 gallons of water in twenty four hours; and a duplex pump size 10 x 10¼ x 10 will deliver 1,872,000.

X Int. 80. Now, Mr. Crumpler, is it necessary as the river rises and falls to shift these pumps on the bank of the river?

Ans. It is.

X Int. 81. About what change in the river requires the pumps to be shifted.

Ans. That depends very largely in this way. The river may be falling and get so low that we must move the pumps down nearer the water; and the indications at that time with the water in the tributaries above us may indicate that the river will go still lower for several weeks. In that case we set the pump very close to the water's edge, thinking the river will go lower; but sudden rains may come and change this calculation by raising the river within a short time, causing us then to remove the pumps back upon the bank. In other words, we are at the mercy of the rise and fall and adjust the pumps according as it does so.

X Int. 82. These pumps as you use them are both suction and force pumps, are they not?

346 Ans. Yes, sir.

X Int. 83. You life the water up to the pumps by suction do you not?

Ans. That is commonly, the term used of getting water up to the

pump. The facts are that the pump simply excludes the air between the pump and the water, and then the water of itself comes up to the pump by atmospheric pressure.

X Int. 84. How high is it practicable to life the water in this way?

Ans. Practically about twenty-four feet. Theoretically, they claim about thirty-three feet.

X Int. 85. Then for all practical purposes you are compelled to shift your pumps on a rise or fall in the river of about twenty four feet?

Ans. That would not be so every time. I will explain in this way. The river at present might be twenty four feet below the pump, and a rise of twenty four feet might come, and the pump remain where it is, the river receding at this point, going back again twenty four feet, and it might do this, rising and falling in between several times before having to remove the pump at all.

X Int. 86. You cannot operate these pumps under water?

Ans. Yes, sir.

X Int. 87. At what depth under the water?

Ans. They can be operated most any depth under the water; but it is not safe to do this, and we never try it.

X Int. 88. As a matter of fact, you have never operated one under the water at all?

Ans. We have.

X Int. 89. How often.

Ans. I don't remember that we have ever operated it but on-e or twice wholly under the water.

X Int. 90. And for how long a period at each time?

Ans. Only for a short time, for a week or so.

X Int. 91. Does the river ever get high enough so you don'e have to use these pumps?

Ans. Yes, sir.

X Int. 92. At what height*h* on the *guage* does the river have to reach before you can dispense with the pump?

Ans. I think it is about forty-six or seven feet, I don't know.

347 X Int 93. Whenever the river falls below forty-six feet you have to use the pump?

Ans. Yes, sir.

X Int. 94. Then when these pumps are placed in use for the river at forty-six feet and it falls two twenty two feet or below, it is necessary to shift the pumps, is it not?

Ans. Yes, sir.

X Int. 95. If you place the pumps at twenty-two feet and the river falls two feet below zero, it would be necessary to shift them again, would it not?

Ans. Yes, sir.

X Int. 96. Again, if these pumps are placed in use when the river is a height*h* of twenty-two feet, and the water in it rises to twenty-four feet, would you have to shift the pumps or not.

Ans. It would not be absolutely necessary, but we do it as a matter of precaution.

X Int. 97. Have you any record of how often you have shifted these pumps since you have been in charge of the water works plant here?

Ans. No, sir.

X Int. 98. Have you any data or memoranda, or have you any recollection, of how often they have been shifted since you owned the plant?

Ans. I have not.

X Int. 99. Can you give us an estimate of how often you have shifted them within that time which will be approximately correct?

Ans. I don't know that I can, the time is two or three years back.

X Int. 100. Can you give me an estimate of how many shifts you have made within the last twelve months?

Ans. I think some three or four, I don't remember.

X Int. 101. Mr. Crumpler, you stated in your direct examination, that you kept a *guage* reading of the pressure of the water in your standpipe at all times. Give me some information in regard to this *guage* reading in this: How low does the water have to get in your stand pipe for your *guage* to read zero? In other words, what does a zero reading on this *guage* indicate?

Ans. It indicates that the water at that point where the *guage* is — not then above the *guage*.

X Int. 102. Where is the *guage* placed from which these readings are taken.

348 Ans. In our office.

X Int. 103. The *guage* is in your office?

Ans. Yes, and there is one in the Washington engine house, owned by the city.

X Int. 104. Now, is I understand you correctly, whenever the water gets below the level of the *guage* in your office, it stands at zero?

Ans. That's right.

X Int. 105. Do you know how much water that required in your standpipe, or whether any or not?

Ans. I think we are on a level, or below the standpipe. I don't think there would be any in the standpipe when it shows zero in our office.

X Int. 106. Supposing, then, that there was absolutely no water in the waterworks system now being operated by you, the *guage* reading in your office before any water goes into the standpipe would be zero?

Ans. Yes, sir.

X Int. 107. Now then, what would the *guage* read in your office when the stand pipe was full and overflowing, if you know?

Ans. Eighty pounds.

X Int. 108. Then this *guage* that you have runs between a range of zero and eighty pounds?

Ans. Yes, sir, except when we are pumping direct into the pipe system and not into the standpipe. In that case it is an easy matter to run the *guage* up to two or three hundred pounds. This method is sometimes operated when we are low in pressu*me* with water in the city. This is done by closing the large value at the foot or bottom of the stand pipe in the sixteen inch main, which enters the standpipe; a*nd* this is done in case of fire, at that ti*me* to get good fire service.

X Int. 109. This pressure cannot be exerted, however, upon it until the mains themselves are filled with water?

Ans. No, sir.

X Int. 110. Now, Mr. Crumpler, can you tell from you- *guage* reading, how many times this plant has been without pressure, and particularly without water for domestic consumption and fire protection, since you have been in charge of the plant?

—. ——.

X Int. 111. The charts themselves will show each day's and hour's pressure that has been maintained by your company, which
349 we have filed to this deposition.

X Int. 112. Let me ask you this question. For all practical purposes we have been without any adequate supply of water in this city either for fire, private consumption or for fire protection as often as the charts show that the pressure fell below zero on the *guage*?

Ans. That is so, except as to the lower part of the city along on Washington street and Levee street and that section. The higher parts of the city would be out.

X Int. 113. You state that on Washington — and higher points that there might be water for both domestic consumption and fire protection when the *guage* reading was below zero. Will you state whether or not that would be limited absolutely to the amount of water that was then in the mains at such times as the water fell below zero in your office?

Ans. No, that is not true, because we might be pumping at the same time.

X Int. 114. Have you any record in your office or elsewhere to show when you were pumping?

Ans. There is no record as to the hours or time when the pump is run.

X Int. 115. According the*m* to what you have sa*id*, the *guage* reading indicates absolutely a sufficient or insufficient supply of water at points having a higher elevation than your office, but at points having a lower elevation than your office it does not?

Ans. That is true, but the lower elevations always have it before the higher elevation has it.

X Int. 116. The-, if I understand you correctly, that as often as the *guage* shows zero or below, the points at a higher elevation than your office are without a supply of water.

Ans. Yes, sir.

X Int. 117. The points below your office at such times may have a supply of water?

Ans. Yes, sir.

X Int. 118. But that the supply of water at such points is dependent upon two conditions, one is the amount of water in the mains, and the other is as to whether or not you are pumping?

Ans. Yes, sir.

350 X Int. 119. Do you have no way of showing from records in your office or *d*rom your memory when the supply of water in the mains was being increased by the action of your pumps?

Ans. Yes, sir, that is, when the water was below the pressure in the *guage*.

X Int. 120. Mr. Crumpler, can you tell me what hydrant now in use by the city is located, on the highest point of elevation?

Ans. Near the City hospital.

X Int. 121. Now what will the *guage* read in your office when there is sufficient pressure to flow ou*r* of the said hydrant?

Ans. It would show about thirty pounds.

X Int. 122. Are there any other fire hydrants at approximately *at* the same elevation?

Ans. No, that is the highest.

X Int. 123. Do you know how many fire hydran*y*s there are in the city of Vicksburg that are at elevations above the *gu*age in your office?

Ans. I do know—very few.

X Int. 124. Do you *o*now what is the elevation above the sea level of the *guage* in your office?

Ans. No, sir.

X Int. 125. Do you know the elevation of the *gu*age in your office above your pumping station?

Ans. There is sixty pounds difference between our pumping station and the *guage* in our office.

X Int. 126. That is sixty pounds per square inch of surface?

Ans. That is about one hundred and thirty or thirty-five feet difference.

X Int. 127. The pressure, then, is approximately one pound for two feet?

Ans. That is what we count it in rough*t* numbers. As a matter of fact it is not that much—about forty-four hundredths of a pound for each foot of elevation.

X Int. 128. That is the unvarying rule, is it not, and has no references whatever to lower or higher elevations?

Ans. Unvarying.

X Int. 129. The fact that the water is practically incompressible makes it unvarying?

Ans. Yes, sir.

351 X Int. 130. Now then, the pressure at a point thirty feet above to the *guage* in your office would be a little less than

fifteen pounds to the square inch when the *guage* reading in your office would be thirty pounds to the square inch?

Ans. Yes.

X Int. 131. Now you say you do not know how many hydrants there are above the elevation of the *guage* in your office?

Ans. I do not.

X Int. 132. You do not know approximately?

Ans. No, I cannot tell that.

X Int. 133. State this, Mr. Crumpler. Is it not a fact that nearly all of the resident part of the city of Vicksburg is at a higher elevation than the *guage* in your office?

Ans. No, sir. Cherry street, except at a point near the court house, would be a little bit lower than the *guage* in our office, and that is about as high a resident street as there is except in the northeast portion of the city on Farmer street.

X Int. 134. The *guage* then, in your office, you would say, is about an average height of the residence part of the city of Vicksburg?

Ans. Yes, sir.

X Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Waterworks and Light Company.

X Int. 136. It has now no property of any kind whatever?

Ans. No, sir.

X Int. 137. What business is it now engaged in carrying out?

Ans. Nothing.

X Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

X Int. 139. What corporate act or acts, if any, has it done since the first of December, 1903?

Ans. I don't know of any except in winding up its business.

X Int. 140. If it has no property and is carrying on no business what further business has it to wind up?

Ans. It is winding up the accounts, etc., that belonged to the company.

352 X Int. 141. It does, then, as a matter of fact, stil- own some accounts and claims against people?

Ans. Yes, sir.

X Int. 142. Then when you said it had no property, you meant that it had no tangible property—I meant that it had no water works, or anything of that kind.

Ans. Yes, sir.

X Int. 143. But it does have claims, rights, choses in action, and things of that kind unwound up?

Ans. Yes, sir.

X Int. 144. When was its last election of officers held?

Ans. I think it was in January, 1903.

X Int. 145. For what period were the officers elected at that time?

Ans. Annually.

X Int. 146. They were elected for one year at that time?

Ans. Yes, sir.

X Int. 147. You are the manager of the new company, the City Water Works and Light Company, the same as you were the manager of the old company, the Vicksburg Waterworks Company, are you not.

Ans. Yes, sir.

X Int. 148. Mr. Crumpler, since the filter has been installed down there, has all the water that has been supplied to the consumers either by the water works company or by the new company, been passed through the filter?

Ans. Yes, sir, except for about four or five days, or a week.

X Int. 149. At what time was the four or five days or a week that you speak of?

Ans. During the month of Dece-ber, 1903.

X Int. 150. About what time during that month?

Ans. Along the latter part of it.

X Int. 151. Have you any record to show exactly what time in the month it was?

Ans. No, sir.

X Int. 152. Are you sure that it was not about the fourteen- up to the twentieth?

Ans. It might have been.

X Int. 153. As a matter of fact, do you not know that was the time?

353 Ans. I do not, Mr. Bryson.

X Int. 154. Now, Mr. Crumpler, I want to ask you — the working of this filter plant down there. Is it not a fact that when you pump water into your settling basins now that you also put chemicals into it so as to produce co-agulation?

Ans. Yes, sir.

X Int. 155. What chemicals do you put into the water and what quantity?

Ans. Sulphate of iron and lime.

X Int. 156. Can you tell me what effect they produce upon the water?

Ans. They co-agulate the smaller matters that are suspended in the water, and about seventy or seventy-five per cent. of the suspended matter is thereby settled in the basins before the water goes into the sand filter beds, and the sand then catches the rest of the said suspended matter.

X Int. 157. Then the iron and lime you put into the water together with about seventy to seventy-five per cent. of the solid or suspended matter in the water is dropped in the bottom of the settling basins?

Ans. Yes, sir.

X Int. 158. How often do you clean out those basins?

Ans. About once a year.

X Int. 159. When were these basins last cleaned by you?

Ans. Last summer. They are always cleaned out in the summer, when the water is warm.

X Int. 160. It there has been then, something like six months up to the 1st of January, 1904, of sediment deposited there?

Ans. Yes, sir.

X Int. 161. Now, Mr. Crumpler, during the period that you were not using your filter, where did you pump your water from?

Ans. The water was pumped into the settling basins, and then run through the troughs of the filter plant, taking the water from the top of the basins instead of from the bottoms.

X Int. 162. In that way was there any of the former sediment in the basins taken up and pumped into the mains?

Ans. No, sir.

X Int. 163. The water then you pumped into the mains for use of the consumers was about as the water which you took out of the stream at your intake pipe?

354 Ans. Yes, sir, and a little purer, because it is settled some of itself.

X Int. 164. Whatever water, then, that was taken from your mains, in the city of Vicksburg, during the period of time you were not using the filter, was a fair sample of water from the original source of supply?

Ans. Yes, sir, except five or six hours one day, when my engineer allowed the water to get so low that it took some of the former sediment in the basins.

X Int. 165. Then for five or six hours during that time, some time in December, between the 10th and the 20th you did pump into your mains some of the former sediment?

Ans. Yes, sir.

X Int. 166. During that five or six hours you pumped into the mains for the use of the consumers wa'er that contained not only the natural impurities that were in the original source of supply, but also certain quantities of the iron and lime which you had put into the water and of the sediment of the water before then used?

Ans. Yes, sir.

X Int. 167. Tell me, if at any other time you ever pumped sediment into the mains?

Ans. No, sir.

X Int. 168. Not even before you installed your filter plant?

Ans. No. If so, there was very little that would be taken out, say three or four feet near the pipe that was used to let the water from one basin to another to get it to the basin where the house pump takes it and delivers it to the city. But generally speaking, it amounted to nothing.

X Int. 169. And if there has been any such sediment pumped into the mains at any other time, you cannot give the time can you?

Ans. I don't know that any other has been pumped into the mains.

X Int. 170. Then, Mr. Crumpler, if any water has been taken from the mains since you have been manager of this plant, with but the single exception of December 10th to 20th, 1903, it has been a fair sample has it not, of the water taken from the original source of supply by you?

355 Ans. Yes, except as to the dates which you mentioned, that I don't know whether they were of those dates or not—no other that I know of.

X Int. 171. Have you a record of the *guage* readings at the pump house?

Ans. No, sir.

X Int. 172. You keep no records?

Ans. No, sir, we have a *guage* there but it is not what is known as a recording *guage*—there is no record of the pressure.

X Int. 173. Did you ever examine the *guage* at the Washington house?

Ans. Yes, sir.

X Int. 174. How many times did you examine that *guage*, Mr. Crumpler?

Ans. Yes, sir, that is, I went there to see what the *guage* was registering.

X Int. 175. Did you make any further or additional examination other than just to see what it was reading?

Ans. I opened the valve below the *guage* that controls the supply of water, from the mains to the *guage*, and to see if it was fully open letting the full pressure to the *guage*, and I found several times that it was not.

X Int. 176. How often did you open the valve to see whether it was letting on full pressure or not?

Ans. Two or three times.

X Int. 177. At any of those times did you change it so as to let the full pressure on?

Ans. I left the valve wide open so that the water could get full pressure on the *guage*.

X Int. 178. You afterwards came back and found it partly cut off, if I understand you?

Ans. I found it in that condition.

X Int. 179. Did you again turn it on?

Ans. Yes, sir.

X Int. 180. Now will you give me an estimate as to how often you found the valve turned so as to cut off part of the pressure, and how often you turned it on full?

Ans. Two or three times. We gave the city notice of the condition and asked that the *guage* be put in some disinterested parties' hands, or to leave the valve open so that the needle of the valve would vibrate; and when this was done we would know that the valve was wide enough open to get full pressure.

356 X Int. 181. Do I understand you to say that unless the full pressure of the water is turned on through the valve, that the needle of the guage is in any way located, or will in any way refuse to indicate the pressure on the guage?

Ans. Yes, sir, if the valve is closed tightly, the needle will not indicate the correct pressure in the mains.

X Int. 182. But will the needle be in any way fastened or cramped so that it cannot move?

Ans. The needle itself will not be cramped, but the pressure will not get to it and push it up. I will say it is a good deal like steam or gas.

X Int. 183. The needle, then, indicates, the pressure on the guage itself, whether the valve is open or not; but if the valve is partly closed, the needle will not indicate the true pressure?

Ans. That is true.

X Int. 184. Who was the fire chief at that time?

Ans. Henry Marks.

X Int. 185. Do I understand you to say in answer to your direct interrogatory No. 18 that when a fire would occur in the city of Vicksburg Mr. Marks the then fire chief, of the city of Vicksburg, would order his men not to open the valves in the fire hydrants to their full extent?

Ans. No, sir. I did not say that the chief, Mr. Marks, would order his men not to open the valves. Whether it was wilful or not is beyond my knowledge.

X Int. 186. Did Mr. Marks himself turn these valves or not?

Ans. I cannot tell you that.

X Int. 187. But you mean to say that during the time that Mr. Marks was fire chief, of the city of Vicksburg, the fire department either refused or neglected to turn on the water to its full pressure in the hydrants?

Ans. That is true in several instances.

X Int. 188. Will you name an instance?

Ans. The time of the fire at Cherry and Jackson streets, we had sixty-four or five pounds pressure in our office, and the fire chief claimed that the pressure was insufficient. During the fire at Mulligan's on Mulberry street, the pressure in our office was only
357 sixty pounds, and the fire chief said he had all the pressure there he needed. At the Lee Richardson fire, in his residence on Cherry street, the hydrant was not open until a long time after they were fighting the fire, when our young man, Mr. Tomkins in the office, appeared on the ground, and saw the hydrant fully opened by one of the firemen after he had asked him if it was open, and when the hydrant was fully opened they got all the pressure they needed.

X Int. 189. Do you remember any other fires in which you contend the hydrants were not fully opened *a so* as to turn on the full pressure?

Ans. There was one down on Levee street near the Advance gin

that there was a question raised about the pressure, and afterwards the assistant chief, Schulen, stated that the hydrant was not fully open at first, and that after it was opened they had all the pressure they wanted. This case was before the city council, and referred to a committee to investigate, and the committee reported back that they found that the hydrant was not fully open at first, but that when it was fully opened they had all the supply of water they wanted.

X Int. 190. That was very near the Advance gin?

Ans. Yes, sir.

X Int. 191. That was during the time Marks was fire chief?

Ans. After he was out.

X Int. 192. Do you remember of any other time?

Ans. I don't recall any other particular instance.

X Int. 193. Then, so far as you know, or have reason to believe the hydrants during all other fires except those above mentioned, have been fully open?

Ans. So far as I know, yes, sir.

X Int. 194. Whose building was destroyed in the fire at the corner of Cher-y and Jacmson streets, if you remember?

Ans. I don't know. There was a Jew on the corner, and I think Geo. Shaw has one or two.

X Int. 195. Those buildings with the exception of George Shaw's have not been replaced?

Ans. I don't think they have.

X Int. 196. Did the fire occur at night?

Ans. Yes, sir.

X Int. 197. Were you up there yourself.

Ans. No, sir.

358 X Int. 198. You have no personal knowledge then of what pressure was on that night, except from the guage reading in your office?

Ans. That's all. That was sixty-four or five pounds, much greater than is called for in our contract.

X Int. 199. Do you know what is the elevation of the hydrant from which the fire company was getting water that night, and if so whether the hydrants so used were at a greater elevation than the guage in your office.

Ans. They would be very near level with the guage in our office. Our office is in a two story building on the second floor, and the guage is five or six feet above that and would throw it very nearly level with those points.

X Int. 200. How about Mulligan's fire? Were the hydrants used there in putting out that fire above or below the guage in your office?

Ans. Below.

X Int. 201. How much below—how many feet?

Ans. I should judge they were twenty or thirty feet below.

—. Where were the hydrants located used in the Mulligan fire—on what street?

Ans. I think one was used from Washington street, corner of Crawford another from Crawford, and another from Mulberry.

X Int. 202. The one on Washington street would be approximately twenty feet below the *guage* in your office?

Ans. Fifteen or twenty.

X Int. 203. The one on Mulberry street would be nearly fifty feet lower than the one on Washington?

Ans. No, not that much.

X Int. 204. How much?

Ans. I should think twenty five feet.

X Int. 205. Then you would say that the hydrant on Mulberry street was at least forty feet below the *guage* in your office?

Ans. I should think it would be.

X Int. 206. Now, as a matter of fact, it is sixty feet below the *guage* in your office?

Ans. I cannot tell you without having it surveyed.

X Int. 207. But if it was only forty feet below the *guage* in your office, the pressure in the hydrants on Mulberry street would be approximately twenty pounds greater per square inch than at
359 the *guage* in your office?

Ans. Yes, sir.

X Int. 208. Were you present during the Mulligan fire?

Ans. Yes, sir.

X Int. 209. Did you examine the hydrants to see if they were turned on full force there?

Ans. No, sir.

X Int. 210. Then the only time that you contend that the hydrants were not fully open was the fire near the Advance gin, near the corner of Cherry and Jackson, and the Lee Richardson fire?

Ans. Yes, sir, so far as I know.

X Int. 211. Were you present at the Lee Richardson fire, and examine the hydrants to see if it was fully open?

Ans. I was not personally present, but the young man, Tomkins, in our office, was.

X Int. 212. Tomkins is still here in town, is he not?

Ans. Yes, sir.

X Int. 213. Were you present at the fire near the Advance gin?

Ans. I was not.

X Int. 214. So you cannot state of your own knowledge, then, whether the hydrants used during that fire were fully open or not?

Ans. I have already stated very fully that the matter was before the city council and referred to a committee and the committee reported back to the council after a thorough investigation, that the hydrant was not fully open for some time after they had been fighting the fire, and then they had all the pressure they wanted after it was fully opened.

X Int. 215. I notice you sat, in discussing this matter in your

direct examination, that the fire chief, Mr. Marks, who was appointed by the city council, and was directly under their control, would not or did not open the fire hydrants full so as to give the full pressure when there was a fire, and would then claim that the water company did not have full pressure required, and in this way made the citizens feel unsafe and caused an unjust prejudice against our company." Do I understand you to charge in the foregoing language that the water was not turned on in full force in order to cause or produce a prejudice against your company?

Ans. That is my opinion.

360 X Int. 215. You make that, then, as a charge against the fire department of the city of Vicksburg?

Ans. No, sir. I did not make it as a charge. I simply stated the facts and gave it as my opinion.

X Int. 216. I notice in your direct examination that you state that "R. M. Kelly, one of the city councilmen, stated to Mr. Hudson and myself, that the city wanted to get the plant for one hundred and fifty thousand dollars, and that the city council intended to do everything in their power to harass and annoy our company, so as to make us sell at that price, and that we might expect the council to do everything they could to break the contract." Will you kindly state when and where you and Mr. Hudson had such conversation with Mr. Kelley?

Ans. The conversation occurred in Mr. Hudson's office, on the — day of ——.

X Int. 217. Who was present at that conversation besides you, Mr. Hudson, and Mr. Kelley?

Ans. There was no one present but us three; but Mr. Keiley made a very similar remark in Mr. Vollor's office, the city attorney at a certain meeting of a committee appointed by the city council, when they offered to pay us a less price for the city hydrant rental than the contract called for. Mr. Vollor remarked at the time: "You do not mean to say to force them to do these things," Kelley said: "Well, to do everything we can to make them sell for one hundred and fifty thousand dollars.

X Int. 218. Who was present at that meeting?

Ans. Mr. Hudson, myself, Mr. Vollor, and the committee appointed. I think D. A. Campbell, alderman, was on the committee, but I am not sure as to who composed the committee.

X Int. 219. Do I understand you to charge that any of the other members of the board of mayor and aldermen have threatened your company in like manner?

Ans. They have not done so in so many words, but in actions they have?

X Int. 220. Where was Alderman Smith when he told you that the city would never buy the plant under the option in the contract because they would not pay as much for it as they would have to pay in that way?

361 Ans. Right at the foot of the steps in front of his office.

X Int. 221. At what time as near as you can state?

Ans. On the 12th. day of June, 1901.

X Int. 222. Do you consider it undue prejudice against your company or unfair that the city should be opposed to building a sewerage system for the reason that it would enhance the value of the water works plant?

Ans. I do.

X Int. 223. Do you consider that the fact that certain candidates for office should, as alleged in your direct examination, pledge themselves that if elected they would be in favor of bringing suit to cancel the contract with the water works company, necessarily unfair or evincing undue prejudice against your company.

Ans. I certainly do.

X Int. 224. Might it not, Mr. Crumpler, be an evidence of righteous indignation against the treatment of the public by the water works company then existing?

Ans. No, sir. Because this was only a few months after our company had taken possession of the plant, and no complaint of any kind had ever been brought to our notice or even talked of. It was too early in the game, Mr. Bryson, there was no complaint up to that time.

X Int. 225. Do you consider that because one puts up with wrong and mal-treatment for an indefinite period of time, that he is thereby estopped forever to complain of the same?

Ans. I think the courts have held to that effec-, and perhaps in this case; but I wish to state that there has never been any maltreatment, or abuse, in the operation of this waterworks plant, but it has fully carried out in every particular its part of the contract.

X Int. 226. I understand then that you vouch for Mr. McFarland and all of the preceding managers of this company, that they have in every particular furnished and supplied to the mayor and aldermen of the city of Vicksburg and to its inhabitants water in accordance with the terms and provisions of the contract made with Samuel R. Bullock & Company.

Ans. Yes, sir. I don't think there is a question about it.

X Int. 227. Do you know of any action taken by the city under a law passed March 9th, 1900, having in view the construction of a new system of waterworks to be owned by the city, and used
362 in supplying water to the inhabitants of the city of Vicksburg.

Ans. Yes, sir. I know that they took action under said legislative act, and held an election on June 3d, 1900, to ascertain whether the city should issue bonds and sell them to the amount of one hundred and fifty thousand dollars to buy the present waterworks or to build one of its own.

X Int. 228. But I asked the question, did you know of anything the city has done looking towards the building of a water works, not to buy the present water works?

Ans. The action that I have just related is the only action I know of that the city council have taken.

X Int. 229. And that action merely gives the right to sell bonds, either for the purpose of buying or building.

Ans. That is the way I understand it.

X Int. 230. The city, then, has taken no further action in reference to said act, so far as you know.

Ans. Except to give us notice that the contract between us and the city was at an end, so as to relieve themselves of liability under that contract.

X Int. 231. Has the city done anything to indicate that it had elected or decided whether it would buy or build?

Ans. Not that I know of.

X Int. 232. So, far, then, as you know, the city has done nothing which indicates that it had elected to build waterworks under said act of the legislature in preference to buying the present system of waterworks?

Ans. Not that I know of.

X Int. 233. All the acts done, so far you know, would have been done in the same way in case the city had decided to buy and not to build.

Ans. No sir. If the city wanted to buy, the act should have been to that effect, and the election to that effect specifically, if they had wanted to buy out water works.

X Int. 234. That might have "bulled" the market, might it not?

Ans. It might, and the other way might have "beared" the market.

X Int. 235. Then the fact that the city had not, up to this day, done any act or passed any resolution showing that it had made an election as to whether it would buy or build under the said
363 law, so far as you know, may have been for the purpose of buying the water works as cheap as possible?

Ans. Yes, sir.

X Int. 236. As a matter of fact, don't you think all the acts done by the city might be explained in that way—that the city desired to purchase at the lowest possible price?

Ans. That might have been their intention, but I think if it was it was a very unjust one to repudiate a contract to get another man's property cheaper than its value.

X Int. 237. I notice in your direct examination you say the filter plant lately installed by the waterworks company cost about thirty thousand dollars. Is it not a fact that it cost considerably under thirty thousand dollars.

Ans. I think it will cost more before we have finally completed what will be necessary to do to get the best service.

X Int. 238. But it has not cost that much to date, has it?

Ans. Right in that neighborhood.

X Int. 239. I notice, Mr. Crumpler, you say in answer to direct

interrogatory No. 32, that "our company has to use a good deal more coagulants to filter and purify water than it would if the sewer discharge was not let out at a point above our pumping station, thereby making it cost a great deal more to operate the filter plant." Do I understand from this that part of the sewerage matter of the city of Vicksburg is pumped into your settling basins?

Ans. I don't think there is a question but what that is true, and too true to be good.

X Int. 240. You consider, then, that the water which you are now taking from the Mississippi river, and that you have been taking, from the Mississippi river for the last year or more contains more or less sewerage matter from the city of Vicksburg.

Ans. Yes, sir, but the water can be made pure by using co-agulants and proper filtering.

Since answering the foregoing and before being sworn to and subscribed, our company had completed the installation of the large three million gallon pumps, before mentioned, which large pumps are now used to pump water from the rifer to the reservoir. This gives us two complete and distinct systems now to convey the water from the river to the large reservoir.

M. O. CRUMPLER.

364 Sworn to and subscribed before me, this 29th. day of February, A. D. 1904.

[SEAL.]

J. H. SHORT,
Notary Public.

365 EXHIBIT "B."

At a special meeting of the board of mayor and aldermen of the city of Vicksburg, held at the office of the Vicksburg Water Supply Company March 27th, 1889, after an inspection of the "works" by the board,

Resolved: That the system of water works of the Vicksburg Water Supply Company constructed in accordance with an ordinance entitled "An ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use and giving to said city of Vicksburg an option to purchase said works," approved November 19, 1886, be and the same is hereby accepted, *provided* that the said Vicksburg Water Supply Company shall furnish and erect at their own proper cost and expense the six drinking fountains, and the one public fountain mentioned in section four (4) of said ordinance. The said six drinking fountains to be furnished and erected within sixty days from this date, and the public fountain to be furnished and erected at such time when the same is located by the mayor and aldermen of said city, and,

Resolved: That the rental for said hydrants shall commence on and date fr-m April 1st, 1889.

(Signed) J. F. BAUM,
Acting Mayor.

At a regular meeting of the may-r and aldermen of Vicksburg, held at city hall, June 17th, 1889.

Resolved: That the water works company be notified that the drinking fountains put up by said company are inadequate, as they do not furnish water required, and the amount sufficient for the purposes intended.

R. F. BECK, Mayor.

CITY HALL, August 5, 1889.

Resolved: That the matter of having rectified the insufficient supply of water as furnished by the public drinking fountains be referred to a special committee consisting of Aldermen Walsh, Crayton and O'Herrin.

R. F. BECK, Mayor.

366 At a regular meeting of mayor and aldermen at city hall,

October 7, 1889.

Resolved: That the account of the Vicksburg Water Supply Company ending July 1st, 1889, amounting to $1312.50, be, and is hereby allowed conditioned, that said water supply company change the present drinking fountains for one- that were suitable and sufficient in all respects.

R. F. BECK, Mayor.

At a regular meeting of mayor and aldermen at city hall,

October 21, 1889.

The special committee to whom had been committed the matter of the public drinking fountains reported that the matter had been referred to Mr. McFarland, supt. of the Vicksburg Water Supply Company, who would make the necessary changes in said fountains. On motion the report was received.

R. F. BECK, Mayor.

At a regular meeting of the mayor and aldermen at city hall,

Jan. 20, 1890.

The water committee reported on communication of Mr. McFarland in regard to the fountains for the city, as follows: That the new fountains are to be the same as the public fountains now at the capitol grounds at Jackson, Mississippi. On motion the report was received and agreed to.

R. F. BECK, Mayor.

At an adjourned meeting of the mayor and aldermen at city hall,

April 16, 1890.

Mr. McFarland, on the part of the water works company, made a proposition in regard to street fountains, and upon motion was rejected and he was notified that original contract must be complied with.

At a regular meeting of the mayor and aldermen at city hall,

April 21, 1890.

A resolution was passed in regard to the water works public fountains. On motion the same was referred to city attorney to put it into a contract form.

R. F. BECK, Mayor.

367 At a regular meeting of the mayor and aldermen at city hall

May 19, 1890.

And ordinance entitled An ordinance in relation to public fountains was offered and read, and on motion it was read by its title the second and third time and passed.

R. F. BECK, Mayor.

At a regular meeting of the mayor and aldermen, at city hall,

June 2nd, 1890.

(Final passage of the preceding ordinance.)

An Ordinance Entitled An Ordinance in Regard to Public Fountains.

Whereas a controversy has existed between the mayor and aldermen of the city of Vicksburg, and the water supply company, as to the insufficiency of the six fountains for man and beast provided to be erected by the said company by the provisions of section four (4), of an ordinance to provide for a supply of water to the city of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and given the said city of Vicksburg an option to purchase said works, approved the 19th day of November, 1886; and whereas, it has been agreed to settle said difference between said company, and said board of mayor and aldermen upon the following basis and terms, to-wit:

That the Vicksburg Water Supply — shall, in lieu of the six fountains which have been erected and the public fo-ntain provided in said ordinance, *shall* erect eight fountains, seven oc which shall be of the pattern and make known as the Moores patent drinkinf

fountain for man and horse, the oval basin being 3 ft. 11 in. 2 ft. 11½ in. deep, height*h* to top of column 3 ft. 2 in. and base 3 ft. 4 in. by 1 ft. 6½ in., a plate and description whereof is hereunto annexed, marked Exhibit "A," and one of which shall be a drinking fountain *and* the character and dimensions set forth and described in the catalogue of J. I. Motts iron works, as plate 22 K–No. 1; which shall, be, height*h* to top of ball 5 ft. 8 inches, diameter of *h*asin 4 ft. 4 in., 14 in. ceep and 1 ft. 9 in. square, a copy of the plate whereof is hereunto annexed and marked Exhibit "B."

That six of said fountains above described shall be erected by said company at the points now occupied by the six fountains
368 heretofore erected, which latter shall be removed by said company, and the other two of said eight to be erected at such points as said board may designate, and that the said water supply company shall be relieved from erecting the public fountain mentioned in said ordinance, provided however, whenever in the future the city may at its *p*wn expense provice and erect a public fountain it shall be supplied with — free of cost by said company.

Now, therefore, be it ordained by the board of mayor and aldermen of the city of Vicksburg, That if the Vicksburg Water Supply Company shall, within sixty days from this date, erect eight fountains as hereinbefore described and at the places designated, and to be designated then the said company shall be deemed and held to have complied with the provisions of section four (4), of said ordinance, in so far as it was obligated to erect fountains for man and beast, and a public fountain, and that thereafter — be held acquitted and discharged of all liabilities in and about the erection of the fountains mentioned in said ordinance, provided that in the event the said mayor and aldermen may, at their own expense, erect in the future a public fountain then the same shall be supplied with water free of cost by said company.

Be it further *p*rdained That this ordinance be in force from and after the date of its passage.

Ordained this 2d. day of June, 1890.

F. L. GUSCIO, City Clerk.

App'v'd this 5th. day of Jure, 1890.

R. F. BECK, Mayor.

At a regular meeting of the mayor and aldermen at city hall,

July 21, 1890.

Resolved: That the public drinking fountain be placed in the center of Monroe street, between Grove street and Jackson street, and that the extra fountain be placed at the corner of South Madison and Mulberry street-.

R. F. BECK, Mayor.

369 I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand, and the seal of the said city, this 2, day of May, 1904.

H. J. TROWBRIDGE, City Clerk.

(Exhibit "B.")

370 EXHIBIT C.

This indenture, made the ninth day of August, in the year one thousand, nine hundred, between the Farmers' Loan and Trust Company, as trustee, under the mortgage or deed of trust made to it by the Vicksburg Water Supply Company, and dated March first, one thousand eight hundred and eighty-seven, and the Vicksburg Water Supply Comoant by the Farmers' Loan and Trust Company, its attorney, duly authorized; constituted and appointed by the said mortgage or deed of trust, of March f-rst, one thousand, eight hundred and eighty-seven together constituting the party of the first part hereto, and Vicksburg Water Works Company, party of the second part;

Whereas, in and by the mortgage or deed of trust made by the Vicksburg Water Supply Company, to the Farmers' Loan and Trust Company dated March first, one thousand eight hundred and eighty-seven, made to secure an issue of bonds of the said Vicksburg Water Supply Company a*h*gregating two hundred and fifty thousand dollars of principal, it was among other things provided that should any default be made in the principal or interest of the said bonds according to their terms or the terms of the said mortgage or deed of trust, and should the same remain unpaid and in arrear for the space of six months, if the holders of at least a majority of the said bonds then owing and outstanding should notify the said The Vicksburg Water Supply Company, and the said The Farmers' Loan and Trust Company in writing, before the interest so in default should have been paid, that they, the said bondholders elected that the principal of all the bonds secured by said mortgage or deed of trust and then owing and outstanding should become and be due and payable then upon such election being made, and notice being given as aforesaid, the principal of all the said bonds should immediately become due and payable, although the period therein limited for the payment thereof should not then have expired;

Whereas, in and by said mortgage or deed of trust it was among other things provided that if default should be made in the payment of the principal or interest of the aforesaid bonds, according to their terms or the terms of the said mortgage or deed of trust, and should the same remain unpaid and in arrear for the space of six months, then it should be lawful for the said The Farmers' Loan and Trust Company, or its successors, on being indemnified as in
371 said mortgage or deed of trust provided and upon the written request of a majority of the holders of the said bonds then

owing and outstanding so to do, to sell and dispose of all the property and franchises of every kind and description by said mortgage or deed of trust conveyed, and all benefit and equity of redemption of the said The Vicksburg Water Supply Company and its successors and assigns, and all persons claiming under them, in and to the same, at public auction to the highest bidder, after a notice thereof to be published in one or more newspapers of general circulation printed in the city of Vicksburg, Mississippi, and in the city of New York, once in each week for twelve successive weeks, and on the day of the sale, and by such further and other notice or requirements as might be necessary under the laws of the State of Mississippi, the sale to be held in the said city of Vicksburg or in the city of New York, with power to the said The Farmers' Loan and Trust Company as such trustee to adjourn the same from time to time, at its discretion by advertising or announcing *at* the time and place of the proposed sale, and as the attorney for the said The Vicksburg Water Supply Company, or its successors, for that purpose by the said mortgage or deed of trust duly authorized, constituted and appointed to make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds in the law for the same in fee simple, which sale so to be made should forever be a perpetual bar, both in law and in equity against the said The Vicksburg Water Supply Company, its successors and assigns, and against all other persons claiming or to claim the said property, or any part thereof, by, from or under them, or any of them.

Whereas, default was made in the payment of the coupon interest which fell due on the said bonds, on the first day of September, one thousand eight hundred and eighty-nine, and also in the payment of the subsequent interest days since the date last mentioned; and

Whereas, on or about April twenty-seventh, in the year nineteen hundred, when all such defaulted interest, excepting the sum of four thousand dollars, remained unpaid and in arrear, and, excepting the interest which fell due on the first day of March, nineteen hundred, had remained unpaid and in arrear for the space of six months, the holders and owners of the entire issue of the said bonds, aggregating two hundred and fifty thousand dollars then owing and out-
372 standing, in accordance with the provisions of said mortgage or deed of trust notified the said The Vicksburg Water Supply Company and the said The Farmers' Loan and Trust Company in writing that they the said bond holders elected that the principal of all the said bonds should become and be immediately due and payable, and

Whereas, on or about the twenty-eighth day of April, nineteen hundred, during the continuance of the said defaults as aforesaid, and in accordance with the provisions of the said mortgage or deed of trust, the said bondholders requested the said The Farmers' Loan and Trust Company to exercise the power of sale contained in the said mortgage or deed of trust, and hereinbefore set forth, and further requested that the said sale be held in the city of New York,

giving to the said The Farmers' Loan and Trust Company, proper indemnification against the costs and expenses likely to be incurred; and

Whereas, in pursuance of the said request and in accordance with the provisions of the said mortgage or deed of trust the Farmers' Loan and Trust Company, as trustee under the said mortgage gave the notice required by the said mortgage or deed of trust, that in pursuance of the said power of sale, it would as trustee under the said mortgage sell at public auction to the highest bidder at the Real Estate Exchange sales room, at 111 Broadway, in the borough of Manhattan, city of New York, and State of New York, on the eighth day of August, nineteen hundred, at twelve o'clock noon, of that day, by Adrain H. Muller & Sons, auctioneers, all the property and franchises of every kind and description conveyed by the said mortgage of March first, eighteen hundred and eighty-seven, and all benefit and equity of redemption of the Vicksburg Water Supply Company, and its successors and assigns, and all persons claiming under them, in and to the same, the said notice containing the description of the said property and franchises as set forth in the said mortgage, or deed of trust, and did publish the said notice in the Vicksburg Daily and Weekly Vicksburg Herald, a newspaper of general circulation printed in the city of Vicksburg State of Mississippi, and in the Harlem Local Reporter, and Bronx Chronicle, a newspaper of general circulation printed in the city of New York, State of New York, once in each week, for twelve successive weeks, and on the day of the sale, as required by the said mortgage or deed of trust; and

Whereas, on the said eighth day of August, nineteen hun-
373 dred, in pursuance of said notices, said The Farmers' Loan and Trust Company by said Adrain H. Muller & Sons, auctioneers, offered said property premises and franchises covered by and described in said mortgage or deed of trust, and the said notice of sale *and* hereinafter described, for sale at public auction to the highest bidder at the Real Estate Exchange sales room, at 111 Broadway, in the borough of Manhattan, city of New York, and State of New York, at twelve o'clock noon, of that day, and did sell the same at such sale to M. O. Crumpler, for one hundred thousand dollars, that being the highest bid;

Whereas the said M. O. Crumpler duly assigned his said bid to the party hereto of the second part, and requested the Farmers' Loan and Trust Company to execute and deliver to the said party of the second part this deed;

Now this indenture, witnesseth, that the said party of the first part to these presents, in order to carry into effect the sale so made as aforesaid, and also in consideration of the premises, and of the purchase price of the said property so bidden as aforesaid, being first duly paid in the manner and as provided by the said mortgage or deed of trust, the receipt whereof is hereby acknowledged, hath granted bargained, sold and conveyed, and by these presents doth grant, bargain sell and convey unto the said party of the second

part, its successors and assigns, forever, all the property and franchises of every kind and description conveyed by the said mortgage of March first, 1887, and all benefit and equity of redemption of the Vicksburg Water Supply Company, and its successors and assigns, and all persons claiming under them in and to the same, the said property and franchises being described in the said mortgage of March first, 1887, as follows (the words "water company," "it" and "its" in said description referring to the said Vicksburg Water Company):

All its real and personal property, goods, and chattels now owned or which may hereafter be acquired by it, including its lands, waterworks, buildings, pump houses, standpipes, reservoirs, machinery pipes, mains, hydrants, apparatus and equipment situated in the county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder, and remainders, tolls, rents, issues, income and profits accruing therefrom.

Also all and singular the corporate franchises, privileges,
374 rights and liberties which the water company now hath and can exercise, or shall hereafter acquire and possess.

"And also all the estate, right, title, and interest, property, possession, claim, and demand whatsoevere, as well in law as in equity, of the water company, of, in and to the property above described, and each and every part and parcel thereof, with the appurtenances."

To have and to hold all and singular the premises, franchises, and property above mentioned and described, and hereby transferred and conveyed, or intended so to be, unto the said party of the second part, its successors and assigns, to their own proper benefit and behoof forever.

It is hereby expressly understood and agreed that no covenants are contained or implied, or intended to be contained or implied in this deed.

In witness whereof, the said The Farmers' Loan and Trust Company hath caused these presents to be signed in its corporate name, as trustee under the said mortgage by its president, and its corporate seal attested by its secretary affixed, and hath also caused these presents to be signed in the name of the Vicksburg Water Supply Company, by itself, as attorney, by its president, the day and year first above written.

(Signed) THE FARMERS' LOAN AND TRUST COMPANY, Trustee,

[SEAL.] By E. S. MARSTON, President.

Attest, SAM SLOAN, JR., Secretary.

(Signed) THE VICKSBURG WATER SUPPLY COMPANY,

By THE FARMERS' LOAN AND TRUST COMPANY, Attorney,

[SEAL.] By E. S. MARSTON, President.

Attest, SAM SLOAN, JR., Secretary.

STATE OF NEW YORK, }
County of New York, } ss:

Be it remembered, that on this 20th. day of August, in the year one thousand, nine hundred, before me, the undersigned, George H. Corey, a commissioner resident in the city of New York, duly commissioned, and qualified by the executive authority and under the laws
375 of the State of Mississippi, to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared Edwin S. Marston, president, and Samuel Sloan, Jr., secretary, of the within named The Farmers' Loan and Trust Company, who severally acknowledged that they signed the within and foregoing instrument as such president and secretary, sealed the same with the corporate seal of the said company, and delivered the same as the act and deed of the said company on the day and year therein mentioned; that the said Edwin S. Marston, president of the said Farmers' Loan and Trust Company, being by me duly sworn, did depose and say that he resides in the city of New York that the seal affixed to the foregoing instrument is the corporate seal of the said The Farmers' Loan and Trust Company, and was thereto affixed by authority of the said company, and that he as president together with Samuel Sloan, Jr., as secretary, subscribed their names thereto by like authority.

In witness whereof, I have hereunto set my hand, and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
[SEAL.] Commissioner for the State of Mississippi.

Office No. 56 Wall street, New York city.

STATE OF MISSISSIPPI, }
Warren County, } ss:

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record, together with the requisite revenue stamps duly cancelled on the 24th day of August, 1900, at 1.40 o'clock p. m. and duly recorded in Deed Book No. 92, pages 361, *et seq.*

Witness my hand and seal of the said court this 24th day of August, 1900.

[SEAL.] J. D. LAUGHLIN, Clerk.

(Endorsed:) The Farmers' Loan and Trust Company, trustee and the Vicksburg Water Supply Company, by the Farmers' Loan and Trust Company, attorney, to Vicksburg Water Works Company. Deed.

376 THE STATE OF MISSISSIPPI, }
Warren County, } ss:

I, J. D. Laughlin, clerk of the chancery court, do hereby certify that the foregoing deed was filed for record this 24th day of August, 1900, at 1.40 o'clock p. m., and recorded in Book No. 92 pp. 361, to pp. —.

J. D. LAUGHLIN, Clerk.
J. L. HYLAND,
Deputy Clerk.

(Exhibit "C.")

377 EXHIBIT "D."

Whereas, on the 8th. day of August, 1900, at the Real Estate exchange, No. 111 Broadway, New York city, State of New York, under and by virtue of a deed of trust executed by the Vicksburg Water Supply Company of Vicksburg, Mississippi, to the Farmers' Loan and Trust Company, trustee, recorded in Book — page —, of the records of deed- of Warren county, Mississippi, securing the payment of two hundred and fifty thousand dollars of bonds, and interest thereon there was sold under the said deed of trust all of the said property, real and personal belonging to the Vicksburg Water Supply Company, located in Vicksburg, Warren county, Mississippi, as well as elsewhere, and more particularly described as follows, to-wit: all of its real and personal property, good- and chattels now owned or which may hereafter be acquired by it, including its land, water works, buildings, pumpm houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus, and equipments situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues income and profits accruing therefrom, also all and singular the corporate franchises, privileges, rights, liabilities which the water company now has or can exercise or shall hereafter acquire and possess. And, also, all the estate, right title interest, property, possession, claim and demand whatsoever as well in law as in equity, of the water company, if, in and to the property above described, or hereafter acquired, and each and every part or parcel thereof, with appurtenances, together with one certain written contract existing between the Vicksburg Water Supply Company and the board of mayor and aldermen of Vicksburg, Mississippi, dated on the 18th. day of November, 1886, and approved on the 19th. day of November, 1886, for the rental of hydrants, for the use of the public for thirty years, which was assigned to the Vicksburg Water Supply Company by S. R. Bullock & Company on the first day of March, 1887, and notice being duly given by the Vicksburg Water Supply Company to said board of mayor and aldermen on the first day of March, 1887, of Bullock & Com-

pany's assignment of said contract to the said Vicksburg Water Supply Company, and of the Vicksburg Water Supply Company's acceptance of the said contract, whereupon the board of mayor
378 and aldermen of the city of Vicksburg, Mississippi, accepted and approved said assignment on the 18th. day of May, 1887.

Now, therefore, at said sale as aforesaid, said Vicksburg Water Works Company, of Vicksburg, Mississippi, purchased said property contract, etc., as above described, and set out.

Now therefore, for the consideration of one dollar cash in hand paid to the Vicksburg Water Supply Company, and for the further consideration of the benefit that the Vicksburg Water Supply Company have already derived through said contract, and for the further purpose of showing good faith on our part to the purchaser thereof, the Vicksburg Water Supply Company, through its president, hereby conveys and quit-claims all of the right, title interest of every kind and nature whatsoever, it may have in and to the aforesaid property, as above described, real and personal, or that it may now own, or may have owner or may acquire hereafter, including said contract with the board of mayor and aldermen aforesaid, situated in the city of Vicksburg, county of Warren, State of Mississippi, unto the Vicksburg Water Works Company of Vicksburg, Mississippi.

It witness whereof, the Vicksburg Water Supply Company has caused these presents to be signed in its respective corporate name by its respective president, and its corporate seal attested by its respective secretary, to be hereto affixed on the 18th day of October 1900.

Revenue stamps having been affixed to deed from Farmers' Loan and Trust Company, to Vicksburg Water Works Company, we deem it unnecessary to affix the same hereto.

(Signed) WHITNEY CONANT,
President of the Vicksburg Water Supply Company.
[SEAL.]
W. G. SNOW, Secretary.

STATE OF NEW YORK, }
New York City and County, } *ss*:

Personally appeared before me, Charles Edgar Mills, a duly authorized commissioner of deeds for the State of Mississippi in New York residing in New York city and State, the within named Whitney Conant president of the Vicksburg Water Supply Company, and W. G. Snow, secretary, who each acknowledged that they
379 signed, sealed and delivered the foregoing deed on the day and year therein mentioned to be the free and voluntary act and deed of the Vicksburg Water Supply Company for the use and purposes therein mentioned, they being hereto duly authorized. That the corporate seal attached is the corporate seal of the said company, and was duly affixed thereto by authority.

Given under my hand and official seal, this October 18, 1900.

(Signed) CHARLES EDGAR MILLS,
[SEAL.] Commissioner for the State of Mississippi in New York and Notary Public for New York County and City.

STATE OF MISSISSIPPI, Warren County, } *ss:*

I, J. D. Laughlin, clerk of the chancery court of said county hereby certify that the foregoing instrument of writing was filed in my office for record on the 10th. day of December, 1900, at 9-10 o'clock, a. m., and duly recorded in Deed Book No. 93, page 463 *et seq.*

Witness my hand and seal of said court, this 10th. day of December, 1900.

(Signed) J. D. LAUGHLIN, Clerk,
[SEAL.] By J. L. HYLAND, D. C.

(Exhibit "D.")

380 EXHIBIT "F."

At a regular meeting of the mayor and aldermen of the city of Vicksburg, Mississippi, held on the 7th. day of November, 1900, amongst other proceedings had at said meeting, was the following, to-wit:

Resolved, That the mayor be, and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrant-. That from and after August, 1900, they will pay reasonable compensation for the use of the said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.

I hereby certify that the above and foregoing is a true and correct copy as taken from the original records as the same appears on file in my office.

Given under my hand and seal of said city, this 13th. day of November, 1900.

—— ——, City Clerk.

(Exhibit "F.")

381 EXHIBIT "G."

VICKSBURG WATER WORKS COMPANY,
VICKSBURG, MISS., Sept. 18, 1901.

To the mayor and aldermen of Vicksburg, Mississippi.

GENTLEMEN: This communication is for the purpose of laying certain facts before your body, which we wish remedied as early as

possible, together with a suggestion which we think will be a fair and just solution of the matter, both to the city and water company.

The facts we wish to lay before your honorable body are these: Some time in the month of April, 1901, the water company permitted you to make a tap in its mains on Crawford St., at Washington engine house, for the purpose of connecting the water company's water with a recording *guage* your honorable body had just bought, for the purpose of keeping a record, to see if the water pressure the water company was maintaining was up to the requirements.

We beg now to say that the valve in the supply pipe to the *guage* is kept closed *to* tightly that the correct pressure cannot get to the *guage*, hence an incorrect record is made. I have investigated the *guage* several times since it was put in and found such a great variance between the water company's *guages* and it, that I called in disinterested witnesses, calling their attention to the difference between the *guages*. I then demonstrated to them by opening the valve so that the water could flo*r* freely to give the city *guage* the correct pressure of the water, and when this was done, the needle of the *guage* immediately went up considerably higher than what it was recording before the opening of the valve.

This incorrect record that is being made, might be used against the water company under our contract, wherein it provides that the water company shall keep 20 pounds pressure at the highest distributing point of its line of mains, and that, if — a period of two calender months in succession, the pressure sha*o*uld remain below 20 pounds at said highest point, the board of mayor and aldermen could, at their election, declare the contract at an end.

The suggestion the water company begs to offer, that would be fair and just to your honorable body, and to the water company is, that the *guage* be placed in the office and in charge of the local secretary of underwriters of the city of Vicksburg, he being a disinterested party. If this meets with your approval, the water company will be willing to pay the expense of said removal.

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The water company must insist upon the *guage* being placed in charge of some disinterested party, that they may keep the record. And we beg to say that this communication is submitted in the most kindly feeling, but with the view that the rights of the water company must be protected. Or, if you will open the valve until the needle *vibrates* it will be satisfactory to the water company to let the *guage* remain where it is because that will be evidence that the water has a free and unobstructed flow to the *guage*.

Respectfully submitted,

M. O. CRUMPLER,
Sec. & Treas.

(Exhibit "G.")

383 EXHIBIT "H."

Call at office and pay before 10th, and save 10 per cent. damages

....

Premises ....

To City Water-Works & Light Co. Dr.
Vicksburg, Miss.

Office hours from 8 a. m. to 6 p. m Register No. —.

..... Statement.....190–.
.....Statement..... .....190–.
.....Feet .....Gallons.

	Per 100 gallons.
Domestic or residence and commercial meter rates for a daily average consumption of 1000 gallons or less	4½c.
From 1000 to 2500 gallons or less.....	3½c.
" 2500 to 5000 gallons or less.....	2½c.
" 5000 to 10000 gallons or less.....	2c.
" 1000– to 25000 gallons or less.....	1½c.
" 25000 to any amount upwards.....	1¼c.

Amount of bill..... ..... $..... .....
Total ..... $.....

Received payment:

CITY WATER-WORKS & LIGHT CO.,
Per —— ——.

Date —— ——.

Regulation: For each premises of an average daily amount of not less than 150 gallons, or 6⅔ cents for residences, and 185 gallons, or 8⅓ cents for commercial uses. These amounts cover all expense of reading meter monthly, together with cleaning and light repairs of meter by the water company when necessary. Customers to furnish meter.

Patrons take water subject to having it cut off in the mains for repairs, improvements, or otherwise, and without rebate, damage or any demands or claims against the water company.

Test Your Meter.

Every water consumer who takes water by meter measurement, owes it to himself to know that he is paying for no more water than

he receives. He should therefore, learn to read his meter, and be careful to observe that there is no waste of water, and if any leak is found in his pipes or fixtures, it should be repaired immediately, as any waste, however small, it may appear when running, will look large when found on the bill, and the water company has no alternative but to charge for the full amount whether consumed or wasted.

A meter will not register more water than passes through it, popular opinion to the contrary notwithstanding, and if surprised at the size of your bill, test your meter; it requires no expert to do it, and a simple method is this: See that no water is being drawn from any of the fixtures, and watch the circle on the dial registering the smallest number of cubic feet. If the hands move at all there is a leak somewhere, the extent being known by the movement of the hand. If this is the case find it and have it stopped. Finding no leak the hands remaining stationary, draw into a tank, or vessel of which you know the exact contents, an amount of water, and you will find on referring to the dial, that too much has not been registered it may be less; more, never.

If the lowest circle registers one cubic foot for every 7½ gallons passed, the hand will make one complete revolution, and the hand of the next higher circle ten cubic feet, will move one point.

The intention of the above is to put it into the hands of every consumer to satisfy himself of the accuracy of his bill at any time.

(Exhibit H.)

The above and foregoing has the following indorsement thereon, to-wit:—No. 41. Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Depocition of M. O. Crumpler. Filed Feb'y 29, 1904. L. B. Mosely, clerk, J. H. Short, D. C.

384 Defendant's Evidence.

The complainant having introduced all its evidence the following deposition- were then read on behalf of the defendant.

Deposition of W. L. Trowbridge.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs. } No. 41.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It is agreed that the answers of Mr. W. L. Trowbridge, of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories, when made and verified by oath before any oddicer au-

thorized to administer oaths may be read by the defendant on the hearing of the above entitled cause as evidence subject only to objections for irrelevancy and incompetency, notice commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me, this the — day of ——," and signed by the officer with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, and place of residence.

Int. 2. State what official position, if any, you now hold in the city of Vicksburg, Mississippi.

Int. 3. If you state in answer to interrogatory t-o that you are mayor of the city of Vicksburg, state how long you have held said office.

Int. 4. State how long you have been a resident and citizen of the city of Vicksburg.

Int. 5. State, if you know, what has been the character or quality of water furnished to defendant city and its inhabitants by
385 Samuel R. Bullock & Co., the Vicksburg Water |Supply Co., and the Vicksburg Water Works Company, has it been at all times good and wholesome and fit for all purposes of domestic or manufacturing consumption.

Int. 6. State who was the superintendent and general manager of said water works system operated by the above named Vicksburg Water Supply Company, and how long he served as such superintendent and general manager.

Int. 7. State who is and has been the superintendent and general manager of said water works system since the same has been owned and operated by the Vicksburg Water Works Company.

Int. 8. State whether the serv-ce rendered by the Vicksburg Water Supply Company, or the service rendered by the Vicksburg Water Works Company has been the better, and wherein the service was made better or worse by the change in the said management.

Int. 9. State, if you know, whether the defendant, The Mayor & Aldermen of the City of Vicksburg in urging the passage by the legislature of the State of Mississippi, bill approved March 9th, 1900, authorizing the said defendant to issue bonds in the sum of $150,000

for the purpose of purchasing or constructing a water works system, did so for the purpose of injuring the Vicksburg Water Supply Company, or its successor the Vicksburg Water Works Company, in any way, or of forcing it to sell to defendant its waterworks system at an inadequate price, or for the purpose of abrogating and taking away from said company, or either of them, any of its franchises or contract rights. State as fully as you can the conditions under which said legislation was procured and the real purpose of the defendant in advocating same.

Int. 10. State, if you know, whether the resolution of the defendant The Mayor and Aldermen of the City of Vicksburg, passed November 7th, 1900, had any reference to or connection with the said act of the legislature, and whether or not they were inspired and procured under any general plan, or as the result of any conspiracy between said defendant, and the inhabitants of the city of Vicksburg or the officers of said city, or either or any of them.

Int. 11. State, if you know, the real object or purpose of,
386 or inducement to, the passage of the said resolution by defendant.

Int. 12. State, if you know, whether said resolution was passed for the purpose of injuring complainant in any way, or of hindering or delaying complainant in the collection of any amount that may have been due by defendant to complainant.

Int. 13. State, if you know, whether or not that said resolution was passed by defendant for the purpose of impairing the credit of said complainant, or of depreciating the value of its property or of disabling it from carrying on its business or to coerce it to sell its property to defendant at an arbitrary or inadequate price, or for the purpose of casting any cloud on complainant's title, franchises and rights, or for the purpose of abrogating and taking away any of the franchises and contract rights of complainant.

Int. 14. Do you know what person or corporation owned a controlling interest in the stock and bonds of the Vicksburg Water Supply Company, and if you know whether or not such person or corporation had been offering such stock and bonds for sale, or not, and if so, at what price.

Int. 15. Do you know whether or not it was considered by the mayor and aldermen individually and collectively, that $150,000 issue of bonds would be amply sufficient to purchase and pay for the water works system then in operation, in the city of Vicksburg and owned by the Vicksburg Water Supply Company.

Int. 16. State, if you know whether or not the mayor and aldermen of the city of Vicksburg, at any time granted permission for the offal and excrement from water closets and other sewerage to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 17. If you state that such permission was granted, state whether or not the Vicksburg Water Supply Company, through its officers and agents had any notice or knowledge of such permit or

permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objections to such permit or permits being granted.

Int. 18. State what means the said water supply company had of knowing exactly how many, and what water closets were
387 so connected with said sewer and discharged into and through the same.

Int. 19. State, if you know, whether any closets or buildings were connected with said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that there were, state if the said Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 20. State, if you know, whether or not that Vicksburg Water Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with said sewer and discharging excrement and offal into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 21. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company, or the Vicksburg Water Works Company.

Int. 22. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR AND
BRYSON & DABNEY,
For Def't.

388 Answers of W. L. Trowbridge to Interrogatories.

Ans. 1. W. L. Trowbridge, 56 years of age, residence, Vicksburg, Miss.

Ans. 2. Mayor of the city of Vicksburg.

Ans. 3. Since Jan'y 1893.

Ans. 4. Since 1847.

Ans. 5. At times the water has been exceedingly muddy, but I could not say whether or not it has at all times been fit for domestic and manufacturing consumption.

Ans. 6. Chester R. McFarland. Served about 10 or 12 years.

Ans. 7. M. O. Crumpler.

Ans. In a general way there weee not as many complaints during the administration of Mr. McFarland as there have been during the administration of Mr. Crumpler. I consider the service given by Mr. McFarland very much the better. The pressure of water for fire purposes was better maintained during the administration of Mr. McFarland that during that of Mr. Crumpler. Since the administration of Mr. Crumpler there have been times when we had no water pressure whatsoever, which condition occurred only once during the administration of Mr. McFarland.

Ans. 9. The mayor and aldermen of the city of Vicksburg had no knowledge whatsoever when they were advocating the passage of a bill for the issuance of bonds to purchase or construct waterworks that Mr. Crumpler was in the land of the living. These works, as I recollect, had been indirectly offered to the city for about the sum of $125,000, and the city was putting herself in a position to purchase the said works from the First National Bank of New York, and there was no purpose whatsoever of doing any injury to the water works company. The city had no knowledge that they were intending to buy the waterworks at that time.

Ans. 10. Most emphatically no. Said resolution had no reference whatever to the act of the legislature, and further, it was not passed as the result of any conspiracy or plan upon the part of the board of mayor and aldermen to in any way injure the water works.

Ans. 11. We wanted to test the legal rights of the city as to whether or not the Vicksburg Water Works Company had a valid contract with the city to supply water and to force the city to pay for it in regard to the fire hydrants.

389 Ans. 12. I should say no, said resolution was not for that purpose at all, but the real purpose as I understood it at the time is stated in answer to Int. 11.

Ans. 13. I am positive there was no such purpose entertained by th- board of mayor and aldermen, or any of them. We simply wanted to test the legal rights of the city, as to the validity of the contract between it and the water works company.

Ans. 14. The First National Bank of New York owned the bonds of said water works company, and I understood from different persons that the bank desired to sell the system of waterworks. My recollection is that the price named was about $125,000.

Ans. 15. Yes, positively, and while we had no direct correspondence with the First national bank in New York, we understood from its agent here, Mr. McFarland, that we could get it for a sum considerably under $150,000 but we did not know what the bonds would bring, and to give ourselves an ample margin, we thought it best to have authority to issue $150,000 in bonds.

Ans. 16. There was one grant as to my knowledge given by the city for that purpose, and that was for the Sisters Xavier's college.

Ans. 17. I can answer that in a general way by saying that said water supply company must have know-, and did know of such permit or permits, from the fact that all connections made by any

plumber of the city was reported to said company, and hence it had full knowledge of such connections and the purpose for which they were to be used. No protest was ever entered by the Vicksburg Water Supply Company to my knowledge.

Ans. 18. I have answered this in my answer to interrogatory 17, that the plumbers made a report to the water company of all connections made by them, and hence the water company must have known of such connections.

Ans. 19. There must have been a great many. The water company had the same means of knowing in regard to this as it did where permission was given by the city.

Ans. 20. Most assuredly as stated in my answers to interrogatories 17, 18, and 19, it had such knowledge, and gave consent by allowing the plumbers to make such connections, furnishing the water and filing no protest with the board.

390 Ans. 21. Most assuredly the same could not have been done except by the assistance of the water from the water company.

Ans. 22. I believe I have embodied all my knowledge in the foregoing answers, that I consider beneficial to either party or material to the case.

W. L. TROWBRIDGE.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before the undersigned, United States commissioner, of the United States circuit and district courts, in and for the western division of the southern district of the State of Mississippi, W. L. Trowbridge, who, after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 14 inclusive are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this the 5th day of April, 1904.

[SEAL.]

J. H. SHORT,
U. S. Com'r.

The above and foregoing has the following indorsement thereon, to-wit:—#41. Equity. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of the city of Vicksburg. Deposition of W. L. Trowbridge. Filed 4/5/04. L. B. Moseley, clerk. J. H. Short, D. C.

391 Deposition of Chester R. McFarland.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Chester R. McFarland, of Tampa, Florida, to the following interrogatories and cross interrogatories, when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency and leading questions, notice, commission and all other matter of form, being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of *hid* authority to administer oaths, it being agreed that *rhe* said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me this the —day of ——" and signed by the officer with proper dates filled in the blanks above shown.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation, or profession.

Int. 2. If you state that you are by profession a civil engineer state where you received your education for said profession, and if you are a graduate of any school of engineering give the name of same, and when you graduated from same.

Int. 3. State how long you have been following such profession, and in what particular line or lines of civil engineering you have been engaged *in*, and also the particular work or works on which you have been employed.

Int. 4. State if at any time you were employed on the Vicksburg, Mississippi, water works system, constructed by Samuel R. Bullock & Company, and afterwards operated by the Vicksburg Water Supply Co., and still latee by the Vicksburg Water Works Company, either in the construction or in the operation thereof.

Int. 5. If you state that the said Vicksburg water works
392 system was constructed under your supervisions, or that you were at any time employed in and about constructing the same, give, as well as you can, a description of the plant, that is, the size and character of the pump-house, and the settling basins, the number, size poeer and capacity of the boilers and of the engines

and pumps, the length of the mains, and size and quality of materials used in the construction thereof, the size and capacity of the standpipe, and all other integral parts of said waterworks system, and the approximate cost of the several parts and the aggregate cost of the whole system.

Int. 6. State if the said plant was economically constructed and whether or not the actual cost was approximately what it ought to have been, and if you state that it was not, state approximately what the system as constructed should have cost.

Int. 7. State, if you know, what additions to the plant were made from the time the plant was constructed, and accepted by the mayor & aldermen up to the 8th. day of August, 1900, particularize the addition thereto, as to boiler, power, pumps mains, and all other items of additional machinery or appliances.

Int. 8. State, as near as you can, the exact description of the waterworks plant at said city of Vicksburg on the 8th. day of August, 1900, giving a description in detail of the pumping station, size and character of buildings, size, name and description of all machinery and appliances in the pumphouse and between the pumphouse and the river, the settling basins, mains, standpipe hydrants, and all other machinery, ways, means and appliances, used in obtaining a supply of water and delivering same to consumers in the said city of Vicksburg.

Int. 9. Give in detail, if you can, an estimate of the value of said waterworks system, owned and operated as aforesaid, on or about the 8th. day of August, 1900.

Int. 10. State, if you made any estimate of the cost and value of said system about said date of August 8th., 1900, and if you state that you did, state whether the figures then made correspond with the estimate given in answer to direct interrogatory nine.

Int. 11. State if you at any time prior to August, 1900, had an option to purchase the said system of waterworks at Vicksburg, and if you state that you did, state as nearly as you can the
393 time when you had such option and when same expired, and the price of said system named in said option.

Int. 12. State as nearly as you can estimate, the rate per cent. of the depreciation per annum of a waterworks system such as the one in said city of Vicksburg, in so far as the same is caused by actual wear and tear by use and operation.

Int. 13. State, if you know, whether there has been any very great fluctuation or change in the cost of material, machinery and supplies used in and about the construction of a waterworks system between the period of August 8th, 1900, and the present date, and if so, has such cost been increased or diminished and to what extent has it effected the value of the said waterworks plant at Vicksburg, Mississippi.

Int. 14. Can you give an approximate estimate of the value of the said waterworks plant in Vicksburg as of the date of your answers hereto, said estimate to be based on the plant as it stood on August

8th, 1900, on the hypothesis that no additions or enlargements have been made to said plant since said date, and that no depreciation has taken place other than that caused by ordinary wear and tear.

Int. 15. State whether or not the machinery and appliances in use by the Vicksburg Water Supply Company, prior to August 8th, 1900, and for some time after said date by the Vicksburg Waterworks Company, was old, worn, or antiquated, and whether there was on the market at the time machinery better suited for the work to be done and more economical of management, and if so, name and specify such machinery or appliances, and whether or not you have considered the same in making your estimates as given in answer to any of the foregoing interrogatories.

Int. 16. State definitely, the means or appliances in use by the Vicksburg Water Supply Company when it first took charge of and operated the said plant at Vicksburg, Mississippi, for obtaining its supply of water from the Mississippi river and transferring the same to the settling basins at the pumping station.

Int. 17. State if the appliances used for so obtaining a supply of water and lifting the same from the said Mississippi river and transferring it into its said basins, has at any time been changed, and if so, when, and what was the change made.

394 Int. 18. Describe the means, ways or appliances in use by the Vicksburg Water Supply Company on and for some time prior to August 8th, 1900, and by the Vicksburg Waterworks Company for some time after said date of August 8th, 1900, in thus obtaining from the said Mississippi river a supply of water and in lifting and transferring same from said river to the settling basins of said system of waterworks.

Int. 19. If you state that as a part of the said ways, means and appliances there was maintained and operated on the banks of the said river, one or more engines or pumps which had to be shifted up and down the bank of said river, as the water rose or fell, state whether it was necessary while so shifting such engine and pump or engines and pumps, to stop the pumps which supplied the water mains and cut off the supply of water from the mayor & aldermen of the city of Vicksburg, and the inhabitants of said city.

Int. 20. If you state that it was, state how long you found it necessary to keep said plant shut down and out of operation so far as supplying water was concerned at each shift of the said pump or pumps on the river bank.

Int. 21. State how long you had charge of the said water works at Vicksburg, Mississippi, as manager and superintendent of the same.

Int. 22. State if at any time during your management of the same, you closed down and ceased to supply said city and its inhabitants with water and if you state that you did close down on one or more occasions, state as well as you remember how many different times you allowed said water works plant to stop and fail to supply said city and its inhabitants with water and what were the

several causes which led up to or induced you to stop said plant from supplying water to said city and its inhabitants, state in detail.

Int. 23. State the capacity of said waterworks plant for supplying water to consumers in gallons per day of twenty-four hours, both as to its capacity to take water from the said Mississippi river and transfer the same to its basins, and as to its capacity to pump water from its basins through its mains to consumers, and particu-
395 larly whether or not its capacity was equal to four million gallons a day either from river to basins, or from basins to consumers.

Int. 24. State whether or not said waterworks plant maintained duplicate engines and pumps for supplying its basins with water from the Mississippi river, and if you state that it did, state what was the capacity of such engine and pump or engines and pumps severally and the capacity of both if worked at the same time, provided you say that both could be worked together.

Int. 25. If you state that you at any time had charge of the said water works plant at Vicksburg as manager or otherwise, state whether or not during said time you had any trouble with the mayor and aldermen of the city of Vicksburg in regard to the character of service rendered and whether or not you observed on the part of said mayor and aldermen, or any of them, a desire to wrong or oppress the waterworks company or those in charge of it.

Int. 26. If you state that you did not have any friction or trouble with said mayor and aldermen or any of the-, state whether or not you found said mayor and aldermen and all of them disposed to deal fairly with the water works management, and to be just towards you and the company you represented.

Int. 27. State whether you heard during the time you represented said company, any complaint of the kind or character of water being furnished by said water supply company either from the mayor and aldermen of said city, or from the inhabitants of said city, and if you state that you did, state the nature of such complaint, and the source from which the same emanated, and whether or not you considered it well founded.

Int. 28. State, if you know, when the mayor and aldermen gave the first permit to have sewerage and the offal from water closets discharged into and through the sewer which extends along and under Washington street in the said city of Vicksburg.

Int. 29. State if you know, the person, firm or corporation which received from said mayor and aldermen, the first permit to so empty sewerage and offal into and through said sewer.

Int. 30. State whether or not you were in charge of said waterworks as the general manager and superintendent of the same when the water closets of the Carroll hotel, Piazza hotel, jail, opera
396 house post office, and many of the business houses on Washington street, and many of the dwellings east of Washington

street were permitted to discharge their sewerage and offal into and through the said sewer.

Int. 31. State whether you or the water supply company interposed any objection to the offal from said waterclosets and other sewerage matter being discharged into and through said sewer.

Int. 32. State whether or not during the time you were superintendent of and in charge of the business and affairs of said water works system that any objection was made and any interference offered by those in charge of said water works system to the discharge of effete matter, offal and sewerage into and through said sewer?

Int. 33. State whether or not said waterworks management encouraged the use of said sewer for the discharge of polluted sewerage matter during all the time you were familiar with the business and affairs of said water supply company.

Int. 34. State if it is not a fact that each watercloset connected with said sewer helped to increase the business of said waterworks system and to swell its revenues.

Int. 35. State, if you can, approximately, what was the gross earnings of said waterworks system at Vicksburg, and what was the expense for operation and maintenance, taking no account of interest paid on bonds, and what its net profits for several years preceding August 8th, 1900, give the fiscal year adopted by said company and let your figures cover the two fiscal years next preceding the said 8th. day of August, 1900.

Int. 36. State if you were not in charge of said waterworks system in the city of Vicksburg, Mississippi, on the 9th. day of March, 1900, at the time the legislature of Mississippi, passed a law authorizing the mayor and aldermen of the city of Vicksburg to issue bonds in the sum of $150,000.00 to buy and build a water works plant, which said act appears on pages 180, 180, 182, 183 and 184 of the sheet acts of the legislature of the State of Mississippi for the year of 1900, and if you state that you were, state whether or not you had any knowledge of the said act before the same was introduced before the legislature of the State of Mississippi.

397 Int. 37. State whether or not you conferred with one or more members of the legislature in regard to said bill, and urged its passage with the open and avowed purpose of selling the said waterworks system to the said mayor & aldermen of the city of Vicksburg.

Int. 38. State, if you know, whether or not at the time from the time said vill was introduced in the legislature up to and including the time when it became a law of the State and for some considerable time thereafter, that the Vicksburg Water Supply Company was offering its entire waterworks system in the said city of Vicksburg, for sale at a sum considerably under one hundred and fifty thousand dollars.

Int. 39. Can you state what individual or corporation owned the bonds issued by the Vicksburg Water Supply Company and the

amount of bonds issued by said company, and unpaid and outstanding against said company, at the time said act of the legislature was passed and became a law, and from that time up to the 8th day of August, 1900, if you can, give the name of such holder or holders of said bonds, and the amount of said bonds, so outstanding.

Int. 40. State, if you can, what individual or corporation owned a majority of the stock issued by the Vicksburg Water Supply Company, giving the name of such individual or corporation, and the amount of such stock so held or owned.

Int. 41. State if at any time from the passage of said act up to the 8th. day of August, 1900, you had authority from the holder or owner of said bonds and a controlling interest in said stock to sell the same to the said mayor and aldermen of the city of Vicksburg, or anyone else, at a price equal to or below the said sum of one hundred and fifty thousand dollars, and if you state that you did, name the person or corporation from whom you obtained such authority, and the price at which you were authorized to sell said stock and bonds or the said system of waterworks giving particulars.

Int. 42. State if you received any letter or letters in regard to the sale of said waterworks system, or the stock and bonds issued by said water supply company, and if you did, state from whom you received the same, and append the same to your answer
398 hereto as exhibits.

Int. 43. State whether or not there was any plan or agreement between you and the said board of mayor & aldermen to have the said act authorizing the said mayor and aldermen to buy the said system of water works at $150,000, passed and then to negotiate a sale of said system to said mayor and aldermen in accordance with the provisions of said act, and if you should state that there was such an agreement or understanding, state the same in full.

Int. 44. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that can be material to the subject of this your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR AND
BRYSON & DABNEY.

399 Cross-interrogatories to Chester R. McFarland.

X Int. 1. If you state in answer to direct interrogatories that the First National Bank of New York City was the owner of the first mortgage bonds, and a majority of the stock of the Vicksburg Water Supply Company, and that you were the superintendent of the water supply company before the new management, the Vicksburg Water Works Company, took charge of the plant on August 15th, 1900 state if you did not, after you found out that the new management did not intend to keep you as superintendent of the works, write a

letter to the First National Bank of New York City, or some one of its officers, suggesting to the bank that if there was any way for the bank to get out of the sale made to M. O. Crumpler you thought it best for the bank to do so as the city of Vicksburg was then in a position to buy the plant, and that a sale could be made to the city. Please attach a copy of said letter, or any letter to that effect, to your deposition as an exhibit thereto.

X Int. 2. If you state in answer to the preceding cross interrogatory that you wrote such a letter to the First National Bank of New York City, state if you did not feel positively sure, or have the assurance, that if the city of Vicksburg bought the water works plant, you would be retained as superintendent; and if said letter was written by you, state if it was not after consultation and an understanding between the attorney for the old water supply company, and yourself. Also state whether or not the attorney for the old water company was retained by the new management, the Vicksburg Waterworks Company, and state where you had your office after the new management took charge during your stay in Vicksburg.

X Int. 3. If you state that you were the superintendent of the old water supply company up to the time the new management took charge, state if you did not influence both of the engineers for day and night service who were under your employment to quit the plant and if it is not a fact that both of them did quit, at the same time, and within ten days after the new management and even before the end of the month, and without giving any notice to the new management that they intended to quit.

400 X Int. 4. Who was the president of the Vicksburg Water Supply Company in 1889, 1900 1901, and who was its superintendent during those three years?

X Int. 5. Did not Mr. William York Atlee, as president of the Vicksburg Water Supply Company, prepare for the use of the First National Bank of New York City, some time in 1890, or thereabouts an abstract of the charter of the Vicksburg Water Supply Company, the names of its officers, a copy of the ordinance and franchise a description of the property of the company in detail a statement of its bonded debt, average consumption of water, operating expenses, and a statement of the cost of the plant to that date, with a plat of the property?

X Int. 6. Did you not assist in preparing said report and furnish a greated part, if not all, the data contained in the report?

X Int. 7. Did not this report meet your approval?

X Int. 8. Did you not know that this report was being prepared for the First National Bank of New York City, to enable it to determine the condition, character and value and cost of the plant as well as its yield?

X Int. 9. Does not the report show a total cost pf the works to that date to be two hundred and seventy-five thousand to three hundred thousand dollars?

X Int. 10. State, in detail, how much money was spent on the plant in improvements from the 1st of January, 1890, to 15th of August 1900.

X Int. 11. State specifically the character of the improvements the names of the parties, and their residences, from whom the material were furnished, and the amount paid for labor since 1st. of January, 1890 to August, 1900.

X Int. 12. State with what waterworks system you were connected and in what capacity prior to your employment with the Vicksburg Water Supply Company.

X Int. 13. If in answer to direct interrogatories 9 and 10, you have states that you made said estimates, please state for whom you made them, and at whose request, and file herewith said estimate in detail, if you have it, and if you have parted with possession of it, state whom you gave it to, and file here with your answer hereto a
401 correct copy of said estimate, if you have not the original.

X Int. 14. Referring to direct interrogatory 11, file herewith said option if you have ever had one.

X Int. 15. What particular part of the machinery or appliances on the 8th. of August 1900 or prior thereto, was in use by the plant that was old, worn, or antiquated, or unnecessarily expenses in management, and what would be the cost of supplying such parts of machinery or appliances? Did you not, in 1902, at the instance of the committee in Vicksburg make a report of the condition of the machinery then in use by the ppant, and if so, what was your report, and what would be the approximate cost to comply with your recommendations contained in said report, to put the plant in first class condition?

X Int. 16. What was the capacity of your reservoir?

X Int. 17. State whether or not the water company installed two pumps of two millions of gallons capacity each in twenty-four hours, and whether or not they were so installed *so* that they could be operated separately or together, and whether or not said pumps remained in said plant from the time of installation up to the 15th of August, 1900, covering the entire period you were superintendent.

X Int. 18. Referring to direct interrogatories 27, state whether such complaint was by way of resolution or ordinance, and if so, file a copy of the same with this answer.

X Int. 19. Referring to direct interrogatories 28 to 33 inclusive, if you state that you did not object, discourage, reprobate, or disapprove in any way the discharge if polluted sewerage matter through the Washington Street sewer state whether your directors or superior officers authorized you to acquiesce therein, or withhold your objection thereto, giving the names of such officers and the dates of the meetings of the directors and the evidence of such authority.

X Int. 20. Have you not several times, since you became superintendent, endeavored to buy the plant and to that end endeavored to organize companies to buy the plant?

X Int. 21. What commissions or interest were you to get for ac-

quiring said plant in the sale of it through you, or those with whom you were co-operating in the sale of the property.

402 In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

Depositions of Chester R. McFarland, a Material Witness in the Above Entitled Cause, Taken by Me This 8th Day of March, A. D. 1904.

In answer to the first direct interrogatory propounded by the defendant, the witness testified as follows:

My name is Chester R. McFarland. My age is 48. Residence Tampa, profession, civil engineer.

In answer to the 2nd. direct interrogatory, the witness testified as follows:

I received my education in private schools in New Castle, Pennsylvania.

In answer to the 3rd direct interrogatory, the witness testified as follows:

25 years. I have been engaged in civil engineering, and the location and construction of steam rail*sorda*, and construction and operation of waterworks. For the last eighteen years in the construction and operation of waterworks; I was employed on the waterworks of Massilon, Ohio, Vicksburg, Miss., Natchez, Miss., Monroe, Mich., and at Tampa Fla.

In answer to the 4th. direct interrogatory the witness testified as follows:

I was employed first by Samuel R. Bullock & Co., during the construction of this work, and afterwards by the Vicksburg Water Supply Company in the operation of said works. In the construction of these works by Samuel R. Bullock & Co. I was the resident engineer and constructed these works in accordance with the plans of C. E. Delafield.

In answer to the 5th. direct int. the witness testified as follows

The pump house. A brick building of about 40 x 70, divided into two rooms, one to be used as a room for pumping machinery, and the other for a boiler room; the settling basins were about 350 feet long by 100 feet wide, one half of which has a depth o*g* about seven feet and the other half about ten feet; these settling
403 basins were divided into several compartments for the purpose of settling this water before it was pumped to the city. There was also designed by C. E. Delafield a filter which was a complete failure. The boilers were two in number, 60 inches in diam-

ater by 16 feet long, each containing about fifty 4 inch tubes of approximately 75 H. P. each; the mains consisted of about twelve miles of 6, 8, and 16 inch, the most of which were six inch pipe, the standpipe was twenty feet in diameter by 140 feet high; there was two vertical differential plunger pumps for lifting the water from the river of the settling basins and each of a capacity of about 1,000,000. gallons; there was also two horizontal, duplex, compound condensing Dean steam pumps, each of about two millions gallons capacity for delivering the water from the settling basins to the city. The materials used were first class in every respect.

In answer to the 6th direct int. the witness testified as follows:

It was not economically constructed for the reason that the materials were purchased by Samuel R. Bullock, after he had considerable financial difficulty, and therefore he had to pay prices which were much in advance of the cash market prices; and also, during the construction of this ppant, work was suspended for quite awhile on account of his financial difficulties. It would be impossible for me to state what the system should have cost him unless I had the market prices of materials at that time before me, which I have not.

In answer to the 7th direct int. the witness testified as follows:

What was added was about four miles of 6 inch mains, one 75 H.P. boiler, and two duplex steam pumps and the piping necessary to connect the same with the settling basins. These pumps were to be used in lifting the water from the river into the settling basins.

In answer to the 8th. direct int. the witness testified as follows:

All the appliances mentioned in the answer to interrogatory No. 5 and to the interrogatory No. 7 were then in use except the two vertical, differential, plunger pumps.

In answer to the 9th. direct int. the witness testified as follows:

It is a difficult matter to make an estimate on this property without having before me maps showing all the val-es, hydrants and pipe lines in said city, but going over the items as I recollect it this plant was worth, at that time, about $140,000.00: that is, it would have taken that amount of money to have duplicated it. Of course there was some depreciation owing to ordinary wear and tear.

404 In answer to the 10th direct int. the witness testified as follows:

I don't recollect having made any estimate of the value of the property at that time.

In answer to the 11th direct int. the witness testified as follows:

Prior to that time, I had had one or two different options on this property, and the last was cancelled the early part of the year 1900. The price named in the option was $130,000.00. or $135,000.00, cash; my recollection is that it was $130,000.00.

In answer to the 12th direct int. the witness testified as follows:

This is a matter in which there is a very great diversity of opinion, but it is generally conceded that 5 % is a fair depreciation on machinery. This would be too high for the other parts of the system. The conditions in regard to soil are very favorable in Vicks-

burg to a long life of cast iron pipe. Another cause of depreciation in many places is the growth of the city, which would cause the company to abandon certain parts of its works and replace it with larger, but this was not the case in Vicksburg, as the works were constructed of ample capacity for a much greater population that Vicksburg now has. Probably less than one per cent. would be sufficient to allow for depreciation on mains.

In answer to the 13th direct int. the witness testified as follows; There has been a great change in the price of materials and labor, so that the value of the property has probably been increased twenty-five per cent.

In answer to the 14th direct int. the witness testified as follows: It would probably take $175,000.00 to replace this plant at the present time, at the present prices of material.

In answer to the 15th direct int. the witness testified as follows: I would say that the pumps were old and of low duty and expensive to operate; there was at that time on the market machinery which could have been operated with at least one-half of the fuel that was consumed by the present plant. I don't make any allowance for this in making my estimate, as in doing so I have
405 simply estimated the amount of money necessary to replace the present machinery,—that is, of the same class.

In answer to the 16th. direct int. the witness testified as follows I took charge of the operation of the Vicksburg Water Supply Company on the 1st. day of October, 1889; at that time they were obtaining their supply from the river by means of one or more small pumps on a raft, the vertical pumps having been abandoned some few months previous.

In answer to the 17th direct int. the witness testified as follows: In reply to that I will say the plant was built with a view to using the vertical pumps in the building for taking the water from the river and delivering it into the settling basins; the suctions were broken off and when the river receded in the spring of 1889 they had to abandon these pumps and place pumps on the river bank.

In answer to the 18th direct int. the witness testified as follows: There was two duplex pumps located on the river bank and connected with the settling basins by means of spiral riveted and cast iron pipes; the size of one was 10 x 10½ x 10, with a rated capacity of 1,197,000 gal. in 24 hours. The other is a duplex 9 x 12 x 10, with a rated capacity of 1,640,000 gallons; these pumps were moved up and down the river bank as the river rose and fell as the variation on the maximum to the minimum height of water was about sixty feet.

In answer to the 19th direct int. the witness testified as follows: It was not necessary to stop the pumps that were pumping from the settling basins to the city, if care was exercised, in moving these pumps at such times as when the basins were full of water. These basins held about two million gallons of water which was ample for more than one day's supply.

In answer to the 20th. d-rect int. the witness testified as follows: The pumps used to supply the city were not shut down.

In answer to the 21st. direct int. the witness testified as follows: From October 1st, 1889 to August 15th, 1900.

In answer to the 22d. direct int. the witness testified as follows: My recollection is that I failed to keep the city supplied but once during the period of my management. This was due to flaoting ice in the river which broke off the suction as often as we would put it in place. This condition existed in a greater or less degree
406 during one whole week, and during this time the city was out of water for about 36 hours; under all ordinary conditions there was no trouble to maintain a supply.

In answer to the 23d. direct int. the witness testified as follows: In the first place, the capacity of this plant to transfer water from the Mississippi river to the basins was only about 2,750,000 gallons, and to supply this water from the basins to the city the capacity was 4,000,000 gallons a day; but during the period when it was necessary to move the pumps at the river, one of these pumps would be out of servuce and of course the capacity would be about 1,200,000 or 1,600,000 in accordance with whichever pump was out of service.

In answer to the 24th. direct int. the witness testified as follows: As stated before, these were two pumps at the Mississippi river for supplying water to the basins, one at a rated capacity of 1,197,000 gal., the other of 1,640,000 gal. for each 24 hours. They could be and had frequently worked together.

In answer to the 25th. direct int. the witness testified as follows: I had no trouble whatever with the mayor & aldermen of the city of Vicksburg; found them perfectly fair in all their dealings with the said water works company.

In answer to the 26th. direct int. the witness testified as follows: I found them disposed to deal fairly with the water works company in all matters, and just towards the company.

In answer to the 27th. direct int. the witness testified as follows: I had many complaints from the inhabitants of the city of Vicksburg about the muddy state of the water, and the complaint was from various consumers, and I felt that the same was well founded.

In answer to the 28th. direct int. the witness testified as follows: I do not know.

In answer to the 29th. direct int. the witness testified as follows: I do not know that.

In answer to the 30th. direct int. the witness testified as follows: I was.

In answer to the 31st direct int. the witness testified as follows: I objected to this connection but not formerly, as I believed it was dangerous to the health of the city of Vicksburg. Not so
407 much because of contamination of the water supply as to the manner in which the outlet from this sewer was disposed of, as it discharged out on to the ground and not into the water, as this

sewerage flowed into the Lake Centennial and its outlet was by West pass, so that this sewerage must have traveled at least three or four miles before emptying into the Mississippi river at a point probably about a mile above our intake.

In answer to the 32d. direct interrogatory, the witness testified as follows.

There was no objection made or interference offered

In answer to the 33d. direct int. the witness testified as follows.

We neither encouraged nor discouraged.

In answer to the 34th. direct int. the witness testified as follows: It did.

In answer to the 35th. direct int. the witness testified as follows:

I refuse to give this, as it was private affairs of the company by whom I was employed.

In answer to the 36th direct int. the witness testified as follows

I was in charge of the water works plant on the 9th day of March 1900; I believe I had knowledge of this.

In answer to the 37th direct int. the witness testified as follows:

I did urge its passage with the intention of selling the water works plant to the city of Vicksburg.

In answer to the 38th. direct int. the witness testified as follows:

I do know that to be a fact.

In*t* answer to the 39th. direct int. the witness testified as follows:

I only know that there was $250,000.00 of bonds outstanding and unpaid; they were held either by the First National Bank of New York, or by individuals interested in the said First national bank.

In answer to the 40th. direct int. the witness testified as follows:

The majority of the stock was owned either by the First National Bank of New York, or by parties interested in said bank. I have not before me a list of the stockholders, and cannot state accurately who the stockholders were or the amount of stock they owned. I only know that the majority of the stock was controlled by the parties heretofore mentioned.

408 In answer to the 41st. direct int. the witness testified as follows:

I did have authority to sell it at a price less than $150,000.00. I obtained my authority from the First National Bank of New York City.

In answer to the 42d. direct int. the witness testified as follows:

I had several letters from the First national bank signed by an officer of the bank, but these letters I have not at hand as all the correspondence,—both letters and letterbooks in regard to this matter, are now in storage in the city of Cleveland, Ohio.

In answer to the 43rd direct int. the witness testified as follows:

There was no agreement between myself and the said board of mayor and aldermen of the city of Vicksburg. The mayor spoke to me, I believe, at one time in regard to getting an option on this property but I told him we would not give him an option; that the property was there for sale if he wished to purchase it; but he was

inclined to think that it would be better to build a new plant, and always intimated to me that he did not propose to pay us anything like the value of the property. In other words, he seemed to think that we were bound to take whatever he saw fit to offer.

In answer to the 44th. direct int. the witness testified as follows:

I don't know anything further of benefit in this case.

409 Answers to Cross-interrogatories Propounded to Chester R. McFarland.

In answer to the 1st. cross-int. the witness testified as follows:

In regard to that I will say that after M. O. Crumpler had contracted for the purchase of the property of the Vicksburg Water Works Company, I wrote to the First national bank, and told them that I believed it was to their interest to not make the sale to the said Crumpler, as I had notified him when he was there looking at the property that the city had had an enabling act passed by the legislature so that they could purchase the said plant; that these bonds had not been voted u-on by the city, but that I had no doubt a vote would be favorable. And when I saw that he intended to put a much higher price on the property, I believed he would antagonize the city, and create trouble that would depreciate the value of said property, and I had learned that he was to pay but $30,000.00 in cash, and $120,000.00 in first mortgage bonds of an issue of $150,000.00, thereby making them a partial owner of the property. I felt that anything that would depreciate the value of the property would be detrimental to the interests of my employer. I had no desire whatever to be employed by the Vicksburg Water Works Company of which M. O. Crumpler seemed to be the manager. This letter I do not have as the copy is now in the store-house in Cleveland.

In answer to cross-int. 2nd the witness testified as follows:

I had no assurance whatever from the city of Vicksburg as to my being retained as superintendent for the company; on the contrary, I had frequently said that I was not hunting for a political job. I had no consultation whatever with the attorney of the old water supply company, before writing this letter. The attorney for the old company I believe was not retained by the management of the new. I had desk room after the Vicksburg Water Works Company took possession of the property, in the office of L. W. Magruder, who had been and is today my personal friend.

In answer to the 3rd. cross int. the witness testified as follows:

I said nothing whatever to these men about quitting; on the contrary advised them to retain their situations, as I had no place to offer them. I now have the day engineer in my employ, and
410 he tells me that he quit because of the incompetency of a Mr. Delafield employed by M. O. Crumpler as general superintendent.

In answer to the 4th. cross int. the witness testified as follows:

In 1889 was William York At Lee; in 1900 it was Whitney

Conant; in 1901,—I believe the company was defunct, as all its property was sold under foreclosure in 1900. In 1889 J. B. Brown was superintendent in 1900 I was superintendent, and in 1901 there was none.

In answer to the 5th. cross-int. the witness testified as follows:

At that time Mr. William York At Lee was in Vicksburg and prepared a statement of this nature, but I have no recollection as to the details.

In answer to the 6th. cross int. the witness testified as follows:

I remember furnishing papers and certain figures from the books for Mr. At Lee at that time.

In answer to the 7th. cross int. the witness testified as follows:

I will say the report was never submitted to me for approval.

In answer to the 8th. cross-int. the witness testified as follows:

I did not know the report was being prepared for the First National Bank of New York City.

In answer to the 9th. cross-int. the witness testified as follows:

I do not know that such was the showing of this report and if it does show those figures, I will state that it represents a sum largely in excess of the money expended on this plant.

In answer to the 10th. cross-int. the witness testified as follows:

I am unable to state what sum of money was expended without having the books before me.

In answer to the 11th cross-int. the witness testified as follows:

In reply to this I would say that I could not give these names or figures without reference to the books of the old Vicksburg Water Supply Company.

In answe- to the 12th cross int. the witness testified as follows.

I was employed by Samuel R. Bullock & Co. as engineer in charge of construction of the Massillon Ohio, water works.

In answer to the 13th cross int. the witness testified as follows:

I answered that I had not made it.

In answer to the 14th. cross int. the witness testified as follows:

This option if it has not been destroyed, is now filed with my other papers in the storehouse in Cleveland Ohio.

411 In answer to the 15th. cross-int. the witness testified as follows:

The pumps were old and necessarily expensive in management and to replace these pumps with modern and less expensive machinery to operate, it would cost probably about $16,000.00. I herewith attach a copy of my report.

In answer to the 16th. cross int. the witness testified as follows:

My recollection is that it was about two million gallons.

In answer to the 17th. cross int. the witness testified as follows:

They did; they were there on the 15th day of August, 1900.

In answer to the 18th. cross-int. the witness testified as follows:

The complaint was made orally.

In answer to the 19th. cross-int. the witness testified as follows:

There was no action taken whatever by the officers of the com-

pany in regard to the discharge of sewerage into the Washington Street sewer; but the records of the city of Vicksburg show that the mayor and board of aldermen did pass a resolution forbidding anyone to connect with this sewer and also directing the discontinuance of the connections that had already been made.

In answer to the 20th. cross int. the witness testified as follows: Yes, I did.

In answer to the 21st. cross int. the witness testified as follows: It was not a matter of commission, but simply I was trying to get control of this property, as I believed it was valuable property at the price named in the options.

CHESTER R. McFARLAND.

Sworn to and subscribed before me, this 11th. day of March, A. D. 1904.

[SEAL.] JESSIE WANCHOPE,
Notary Public for the State of Florida at Large.

My commission expires Nov. 15, A. D. 1906.

412 Mr. P. M. Harding, chairman, and gentlemen of the committee:

In accordance with your instructions, I have made a complete examination of the pumping plant of the Vicksburg Water Works Company The plant consists of the following:

3 horizontal tubular boilers, each 18 ft. long, 60 in. in diamater, each containing about fifty 4 inch tubes. Said boilers have a capacity of, approximately, 75 horse-power each.

2 duplex compound condensing pumps, each 14–26–12–18 manufactured by the Dean Steam Pump Company, of Holyoke, Mass. Each pump has a separate jet condenser and vacuum pump. These pumps are used to deliver water from the reservoir to the standpipe or pum-ing direct to the city when the standpipe is cut off.

The pumping plant on the river used for the purpose of taking the water from the river and delivering it to the reservoirs, consists of two duplex pumps, manufactured by Henry R. Worthington, of Brooklyn, N. Y. One is 10–10½–10 with a rated capacity of 1,197,000 gallons for each 24 hours. The other is a duplex 9–12–10, with rated capacity of 1,640,000 gallons for each 24 hours.

The boilers were designed and built to have a working pressure of 80# per square inch with a large factor of safety. The Vicksburg Water Supply Company had them inspected and insured by the Hartford Steam Boiler Inspection & Insurance Company, which allowed a minimum steam pressure of 90# The Vicksburg Water Works Company have them now insured in the Ocean, of London, which permits a maximum of 110# and are working at about 100#.

The matter I have mentioned to explain some changes which have been made by the present Vicksburg Water Works Company.

These boilers were found to be in good conditio- and of ample capacity to operate the plant.

By the contract with the city, each of the pumps used for delivering the water to the city were to have a capacity of 2,000,000 each in 24 hours. By reason of the low steam pressure (80 #) the water plungers had to be made smaller than intended originally and the pump's speed increased over 40 % thereby making it much harder on the machine and more liable to accodent when called upon to supply the contract capacity, but the pumps have never failed to run at the required speed when called upon. The plungers and bushings in these pumps had become much worn as they had never been
413 renewed, hence the slippage was anywhere from 10 to 25 %.

To correct this trouble, the Vicksburg Water Works Company has put into the pump on the south side of engine room (known as # 2 pump) new bushing, and increased the plungers to 14 inches, and thereby reduced the speed of the pump and still retain a capacity of 2,000,000 gallons in 24 hours. And I am informed by the manager that he intends to do the same with the pump on the north side of the engine room at an early date. This is a very commendable thing to do; if they are willing to take the increased risk of lowering the factor of safety of the boilers, and they would seem to be justified in so doing when they can get insurance under such conditions by a reliable boiler insurance company. After making an examination of # 2 pump, I find that the suction deck on the outer end of the right-hand water end has been cracked for some time, and was rrpaired by the Vicksburg Water Supply Company temporarily, but that such repairs have been in constant use and have seemed to be permanent, and now look as if they might continue so indefinitely; otherwise, I find this pump in good condition, except ordinary wear, and believe it capacle of delivering the required amount of water to the city if it can be obtained from reservoir.

Pump # 1 was found to have its plungers and bushings much worn and I doubt if it could deliver the required amount of water, as per contract, but when these parts are renewed, as I am informed by the manager they will be then it can supply the required amount, as per contract. The place if filthy, and I would suggest a liberal use of the article which they supply their consumers reinforced by plenty of soap, as I do not believe it possible to keep machinery in good condition where surrounded by dirt, as no good engineer will permit his place to become in any such condition; and if the company persists in permitting it, the engineer will soon be on a par with the surroundings and bad results will follow, to the detriment of the general public.

The situation at the river is not so satisfactory. The smaller pump, 10–10½–10 is the older, but has been reinforced in the last two years with a new water end. Its steam end if in fairly good condition but the plungers are much worn, and while it will supply some water when located near the river, yet will fall much short of

the rated capacity. This pump should have new plungers
414 and rods at once the other river pump is in bad condition,
with plungers and rods much worn and the nuts constantly working loose which hold the plungers in place*m* causing frequent stoppage of the pump. The steam end of this pump should be renewed also. I am informed by the manager that he has ordered new rods, plungers and bushings for this pump, and has increased the plungers from 12 inches to 13¼ inches and thereby increased the capacity of this pump to 2,000,000 gallons for each 24 hours. This change is made on the basis of the increased steam pressure on the boiler, making this change in the size has caused delay in the filling of his order, and he informs me he will get these parts in the early part of January, 1902.

But until such time as these repairs are made, the situation is precarious in the extreme, and I would suggest all haste in making such repairs. I find that the banks of the river have cut away at the base somewhat during the last high water, and left a very steep bank about 20 feet high, over which the river pumps have to be moved and erected thereon. This bank should be graded down to an easy slope so that if caving should take place during the rise of the river, the pumps would not be so liable to be lost in the river, otherwise, a small cave might precipitate the pump into the river and thereby disable the plant for some days.

If the above recommendations are carried out, then the plant will be able to maintain an ample supply of water for present needs.

The city is growing and the consumption of water is increasing each year, and to insure an ample supply, I would suggest that in addition to the above, the company purchase another 2,000,000 capacity pump for the river, and with the larger of the two now in use, one of them could at all times be connected at the river ready for service and thereby comply with the contract as implied as to capacity, and by holding the 10–10½–10 in reserve, it would make the matter of supply one without question. The cost of the suggested improvements need not exceed the sum of $1500,00.

In regard to the failure of supply in the part, I learn that an attempt was made to use the 9–12–10 Worthington pump to draw water through the old 12 inch suctions into the deep well in the house. This must necessarily fail in the present condition of the suction pipes as it did. And while this experiment was being made,
the small pump being in bad repair, failed to supply the
415 necessary water to supply the city, and when the change was made back again to the river, there was a great demand by reason of the former lack of water and this was at once followed by an unprecedented cold wave in this country, and many people wasted water rather than take the trouble to shut off at the stop and waste, hence the partially disabled river pumps were unable to catch up with the demand. This, of course, was all caused by the company doing that which it should not have done, which was the tak-

ing of a part of the machinery to make an experiment, and can all be stated in a few words, which are, gross mismanagement.

Hoping these recommendations may meet your hearty approval, I am,

Yours respectfully,

CHESTER R. McFARLAND,
Consulting Engineer.

Vicksburg, Miss., Dec. 28th, 1901.

416 Summary.

GENTLEMEN: The following summary is taken from the *t*eport in detail that you may have same for ready reference:

First. Have new piston rods and plungers put into both river pumps at once, and in so doing if the Vicksburg Water Works Co. desires to change the plungers in the 9–12–10 pump to 13¼ no objections need be raised if they will continue to carry 100# steam during low water in the river.

Second. Renew the steam end of the 9–12–10 pump at an early date.

Third. Have river bank graded to a reasonable slope so that the danger of the pumps being carried into the river by caving of the banks may be reduced to a minimum. This should be done at once before the rise in the river makes it impossible.

Fourth. Have new plungers and bushings put into No. 1 pump used for pumping from reservoir to city.

Fifth. Purchase for use at the river a new pump with a capacity of 2,000,000 gallons in 24 hours, and then always keep either the 9–12–10 or the new pump connected up ready for service; or, in other words, keep them both connected up ready for service, at all times, and never move but one at a time.

If these recommendations are faithfully carried out, Vicksburg will not again be without an ample supply of water for some time to come.

I would also suggest that the place be cleaned up, and kept in that condition.

Yours respectfully, ——— ———.

The above and foregoing has the following indorsement thereon, to-wit: #41 Equity. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Chester R. McFarland, witness for defendant.—Filed March 15, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

417 Deposition of J. J. Hayes.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Mr. J. J. Hayes, of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence, subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me, this the — day of ——," and signed by the officer with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.
HUDSON & FOR,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you were an alderman in the city of Vicksburg during the years of 1899 and 1900?

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same, and
418 state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know whether or not Mr. Chester R. McFarland, while he was superintendent and manager of said water

works in the city of Vicksburg, took any part in the passage of said bill if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor & aldermen of Vicksburg, and if so, at what price was said system of waterworks offered for sale to the said mayor and aldermen, and how long said offer was open for acceptance.

Int. 7. State, if you know, whether on tot there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge and the price at which it was sought to dispose of said system of water works, to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg, at any time prior to August 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint eithee upon the part of the mayor and aldermen, of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

419 Int. 10. State, if you know, whether the Vicksburg Water Supply Company while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city?

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down or so failed to furnish water?

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company, since it became the owner of said Vicksburg water works system.

Int. 13. State as near as you can how often the plant has been closed down since August 1900, and for what length of time in each instance.

Int. 14. State whether, or not, since August, 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said ompany has been sufficient, and if you state that it has at any time

been insufficient, state as fully as you can how often you have known it to be so and the extent of insufficiency, and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, that from and after August, 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state you were present, state whether or not you voted for said resolution, and if so, why you voted for the same?

420 Int. 17. State if you know, whether or not the passage of said resolution was in pursuance of a scheme to force said water works company to sell to defendant its waterworks system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city under its said contract, or to unlawfully endeavor to disable said company from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 20. State, if you know, whether the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of any inflammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers, and agents and confederates of the city of Vicksburg against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission for the offal and excrement from water closets and other sewerage, to

be emptied into and through the sewer under Washington street in the said city of Vicksburg?

421 Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not the said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what waterclosets were so connected with said sewer and discharged into and through the same?

Int. 26. State, if you know, whether any closets or buildings were connected with said sewer and discharged into and through the same, other than those which received from the mayor and aldermen of said city of Vicksburg, such permits, and if you state that they were, state if the said Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did state how you know it had such knowledge?

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of ecery building or water closet therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not the said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active cooperation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company, or the Vicksburg Water Works Company.

422 Int. 29. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

423 Answers of J. J. Hayes to Interrogatories.

Ans. 1. J. J. Hayes, over the age of 21 years, Vicksburg, Miss., general merchant.

Ans. 2. Yes, sir.

Ans. 3. I did, I was acting in the capacity as alderman.

Ans. 4. I do not remember what part I took in it. The main pur-

pose was to have the bill passed so that the city could acquire water works and build a seweeage system.

Ans. 5. I was chairman of the waterworks committee, of the board of mayor and aldermen of the city of Vicksburg, and as such had frequent conversations with Mr. McFarland, who was then supt. of the water works company, both in reference to the passage of the bill, and to the purchase of the waterworks plant from the First National Bank, of New York, and as a resul/ of my conferences with Mr. McFarland, I might say at his suggestion, I offered a resolution in the board of mayor and aldermen that we get an option for the purchase of the water works from the First National Bank of New York, but the other members of the board did not think it was necessary to get it at that time, so the matter was dropped. Mr. McFarland was cognizant of all these facts.

Ans. 6. The owners direct, that is, the First National Bank of New York, did not make any offer to the board of mayor and aldermen to sell said waterworks, but Mr. McFarland, the then supt. told us it was for sale, and indicated a figure considerably under the $150,000, and that we could get it at any time we desire to purchase it at a figure under $150,000.

Ans. 7. I never knew of any scheme in that regard.

Ans. 8. None at all.

Ans. 9. I don't know of any complaint with the exception that we always did have as to muddy water at the season of the year when the Mississippi river was high. That complaint existed from the day the water works commenced to furnish water until lately.

Ans. 10. To the best of my recollection, I did.

Ans. 11. I don't remember of a single instance, but I understand one time while I was away from here there was one break down that lasted for a few days.

424 Ans. 12. When the water works company first took charge of it we had some low pressure, and the water supplied was not as good as before I learned it was caused by the engineer of the plant being changed and a new engineer placed in charge who did not give as good results as the former one. Frequently after that we had complaints from the citizens in general in reference to the company not giving as good a supply of water as they had been before, while I was a member of the board. What the cause of it was I cannot exactly say, there was a considerable lack of pressure which brought in muddy water especially in the more distant districts, particularly Speed's addition, from where we had a number of complaints.

Ans. 13. I cannot say exactly, but I know it has been closed down a number of times, though how long at a time, I cannot state definitely, I think for over 24 hours. I know it has been closed down in one instance, for as much as 2 or three days, somewhere along there in the neighborhood of 2 days.

Ans. 14. I can only answer this in the most general way. I do know that there was considerable complaint about low pressure, and I know that at my house on one or more occasions the pressure was

exceedingly low, but just how often and for how long a period of time in each instance, I don't remember.

Ans. 15. Yes, sir. I was.

Ans. 16. I simply voted for it to test the matter as to whether there was a contract or not, and not in any way to harass the water works company. I was very friendly with the water works company while I was a member of the board, and was not in favor of any corporation being jumped on simply because it was a corporation, or was being managed by strangers. I wanted to decide the question whether or not a contract existed between the city and the water-works company. This resolution was passed after we had a consultation with Mr. Crumpler in Mr. Hudson's office in which he offered to build a sewerage system and sell the water works to the city of Vicksburg, for the amount of the bonds, for $300,000 however, there was a proviso in that connection, that the sewerage system was not to exceed a specified amount which offer we did not act on at all as a board. That was a- informal meeting in Mr. Hudson's office. I don't remember the date, but my recollection is that it was on a Saturday afternoon shortly after the passage of the resolution, The resolution had no reference whatever to the purchase of the waterworks.

425

Ans. 17. To my knowledge there was no scheme on the part of the city to force the waterworks company to sell to the city of Vicksburg, but as I said before, it was simply to test the question of whether or not there was any valid contract between the city and the water works company.

Ans. 18. None that I know of. I never heard of any conspiracy or scheme against the water works company or talk to that effect.

Ans. 19. The board of mayor & aldermen had an act drafted by the city attorney and set out to the legislature for passage, and its purposrs is as clearly shown by the face of it as I can state

Ans. 20. There was no desire whatever to coerce the water works company on the contracy, the passage of the act was procured for the purpose of building a sewerage system and buying water works and the bonds to be issued, and sold for the purchase of the water works was largely in excess of what we understood ir was then being offered for sale.

Ans. 21. So far as I know, neither the mayor nor the aldermen procured the publication of any articles of any sort in regard to the water works company, and for my own part, I know pos-tively I did not.

Ans. 22. No such conspiracy existed.

Ans. 23. I remember one instance that such permission was given, and that was for the St. Xavier's college, and I voted against permission in that instance.

Ans. 24. I do not remember whether we ever gave notice to the water company that permission had been given or not to have sewerage from water closets discharged into the Washington St. sewer, but I do know that we never heard any complaint from Mr. McFar-

land, or anyone else connected with the water works company in regard to the use of this sewer for such purpose, and I was chairman of the water works committee of the board of mayor and
426 aldermen, and if any protest had been made it would naturally have come through me.

Int. 25. The water supply company furnished the water and had a record of exactly what closets they would furnish water to, but whether they had a record of where the closets emptied I do not know. The water was put into the closets, either by the water works company, or its agents, and the city gave no authority, so far as I know, except in the instance mentioned above.

Ans. 26. This question is answered by my answers to Nos. 24 and 25.

Ans. 27. The water works company must have known and consented to this because the board of mayor & aldermen knew nothing of it in a great majority of the cases.

Ans. 28. Certainly not.

Ans. 29. In answer to this question I will say that I always considered it for the best interest of the city to help along all of the corporations, and to that end I have always favored the water works company, when I could do so consistently, and never at any time did I do anything to injure the said company.

J. J. HAYES.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before the undersigned, authority, who swore to the correctness of his answers to the foregoing interrogatories above set forth and stated and subscribed to the same on this the 19th. day of March, 1904.

[SEAL.] J. H. SHORT,
U. S. Commissioner.

The above and foregoing has the following indorsement thereon to-wit:—#41. Vicksburg Water Works Co. *vs.* Mayor and Aldermen of the City of Vicksburg. Deposition of J. J. Hayes,—Filed 3/21/04. L. B. Moseley, clerk, J. H. Short, D. C.

427 Deposition of D. A. Campbell.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Capt. D. A. Campbell of Vicksburg, Mississippi, to the following interrogatories and cross inter-

rogatories, when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to wit: "Sworn to and subscribed before me this — day of ——," and signed by the officer, with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY, &
O. W. CATCHINGS, For Def'd't.
HUDSON & FOX, &
SMITH, HIRSH & LANDAU,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you are, state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and alderman of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and
428 if you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price said system of waterwords — offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme

or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there -as, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor & aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnish- to said mayor and aldermen, or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water
429 Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system, at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as y-u can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as y-u can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for h-w long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the

use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

Int. 17. State, if you know, whether or not the passage of
430 said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavore to disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if you know, whether the defendant procured the passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do any thing to procure the passage of said act, state exactly what was done by the defendant with that end in view?

Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of an- inf-ammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg, against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission
431 for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply

company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active co-operation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

432 Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

433 Answers of Capt. D. A. Campbell to Interrogatories.

Ans. Int. 1. My name is D. A. Campbell, age 61 years, residence Vicksburg and my occupation is a clerk.

Ans. Int. 2. I am a member of the board of mayor & aldermen of the city of Vicksburg, was elected in Dec. 1892 for 2 years; was sworn on the following January, and then assumed the office; was again elected in Dec. 1899, sworn in the following January, and have since that time continuously filled the office.

Ans. Int. 3. During the term of 1899 and 1900, I participated in my official capacity with the board of mayor & aldermen in asking the legislature to authorize the city of Vicksburg to issue bonds for

the sum of $150,000 to purchase or construct a waterworks plant in the said city.

Ans. Int. 4. I wanted the bill passed because I had reason to believe that the water works company then in Vicksburg would be for sale, and I wanted the city to own it. In conjunction with this bill the board of mayor & aldermen also asked authority to issue bonds for $150,000 to construct a sewerage system. I advocated that the bill bind the city to the ownership of its own waterworks before building sewerage, and with this condition the bill or petition went to the legislature.

Ans. Int. 5. From conversation with Mr. McFarland, who was then manager of the water works, I was convinced that the plant could be bought and for less than $150,000. Mr. McFarland wanted the city to own the water works, and I have reason to believe actively interested himself for the city in the passage of said bill.

Ans. Int. 6. I do not remember that any positive offer was made to sell the water works to the city.

Ans. Int. 7. Before the close of the legislative session of 1900, and after it was known that the legislature had authorized the issuance of said bonds to purchase the water works, Mr. S. S. Hudson requested an informal meeting of the board of mayor & aldermen at his office. The announcement of his ownership of the water works was a surprise and a disappointment to me. After getting us together
434 he told us that he represented parties who had purchased the water works and he wanted to talk with us about it, the question of selling to the city came up. Mr. Hudson said the $150,000 was hardly an inducement for the water works alone but if we would give them the building of the sewerage, and when the sewerage was completed turn over to them the whole $300,000 for the waterworks and the building of the sewerage they would consider the proposition. After this I think there was some correspondence between Mr. Hudson and the mayor.

Ans. Int. 8. Prior to August, 1900, there was no official disagreement between the Vicksburg Water Supply Company and the board of mayor & aldermen, that I can remember.

Ans. Int. 9. Unofficially there was constant complaint of the character of water furnished. It was muddy and unfit for bathing, washing and laundry purposes. The inhabitants of the city who used the water complained that the contract to furnish good and wholesame water was badly violated, but no test of such violation was made.

Ans. Int. 10. With one or two exceptions, when the river was chocked up with ice, &c. the supply of water for fire protection, flushing &c. was ample, and there was no complaint of want of pressure.

Ans. Int. 11. As far as I know there was no failure on the part of the Vicksburg Water Supply Company to furnish water either to the city or to the inhabitants, except once or twice for a short period.

Ans. Int. 12. Since the Vicksburg Water Works Company became

owners of the plant, the service from the beginning has been very unsatisfactory. The company itself complained that there was a waste of water, and then the city fire department complained that there was frequent want of pressure. In order to guard a*h*ainst this weakening in supply, and to note exact time &c. the city was forced to put water g*ua*ges at the engine houses, something that was never needed or suggested under the management of the old company. The public water troughs or fountains under my supervision as chairman of the city's water committee have been exceedingly unsatisfactory. Frequently without a sufficient supply. In this connection the water company claims the city must keep these
435 troughs, or fountains, cleaned out and in repair, lack of supply force in my judgment frequently contributed to their getting dirty. The Vicksburg Water Works Company claimed protection under its contract against the public use of the troughs or fountains for drinking purposes by poor people in dry times. Under the old company I never heard this, the water being altogether waste. The Vicksburg Water Works Company demanded protection, that property owners near the public troughs or fountains could be coerced into building cisterns or do the more economical thing of getting water from the said company. It further protested and sought an ordinance from the city to prohibit contractors &c. from using waste water in the street gutters. It further asked the city through its board of mayor & aldermen to pass an ordinance prohibiting the company's individual contractors from intentionally or negligently using excessive water in his or her private premises. The board of mayor & aldermen granted protection when asked for.

Ans. Int. 13. Since August, 1900, the plant has been closed down a number of times. At one time for weeks approximately closely on to the limit of their contract. During this time, however, the limit for 20 # pressure was protected inside of every two weeks. The city sought to know the reason for this suspense at one time, and was refused by the owners of the water works.

Ans. Int. 14. For most of the time since August, 1900, there has been sufficient supply of water for fire protection, but the sinking of pressure at different times, and without notification from the water company, has kept the fire department in a state of proximity and unrest. Chief Wilkes has freq*i*ently expressed uneasiness to me. I have not kept up with is sufficiently to give times *a* and date-.

Ans. Int. 15. I voted for said resolution.

Ans. Int. 16. I was present and voted for said resolution, and as to my reason for voting for the same, *U* would say that the board of mayor & aldermen considered that the service which was being rendered by Mr. Crumpler, under the new management, was exceed-
ingly bad, and the question was raised as to whether or not
436 the water works company had not forfeited its contract with the city. The board sought legal advice upon this question, and were advised that the water works company had forfeited its

contract with the city, and it was to raise this question that the foregoing resolution was passed by the board and for no other purpose.

Ans. Int. 17. The real purpose of said resolution as I understand it is stated in my answer to Int. 16. There was no scheme to force the city to sell. We merely sought to test the question of whether or not the water works company had violated its contract so as to forfeit the same.

Ans. Int. 18. I can state positively that there was not.

Ans. Int. 19. I have already stated fully what was done by the city in reference to the passage of this act.

Ans. Int. 20. I can state positively that the city in advocating the passage of said act had no such purpose. In fact we knew nothing of the Vicksburg Water Works Company, or of the persons who now own the stock in said company. My answer to a former interrogatory in answer to Mr. Hudson's proposition to sell to us states the first knowledge that the city had so far as I know in reference to Mr. Crum-ler and the Vicksburg Wate· Works Company Before then we had been dealing with Mr. McFarland who was the supt. and manager of the Vicksburg Water Supply Company.

Ans. Int. 21. No, sir.

Ans. Int. 22. There was nothing of the sort.

Ans. Int. 23. I remember only one instance in which permission was given by the board, but the connections were made with the tacit knowledge and consent of the board in so far as it took no steps to prevent such connections.

Ans. Int. 24. I know nothing about the knowledge of the Vicksburg Water Supply Company as to this except that it had to furnish the water used in each and every instance.

Ans. Int. 25. They had a better opportunity than the city had because they furnished the water.

Ans. Int. 26. There were connections made that the city has no knowledge of, but I do not know what knowledge that the water supply company had of the same.

437 Ans. Int. 27. I cannot speak definitely as to the knowledge of the water works company in this matter, but certainly it has a better opportunity of knowing than the city as it was required to furnish the water to be used in each instance.

Ans. Int. 28. I cannot see how such consent could have been made for the offal and excrement to be emptied into said sewer except by the knowledge of the water works company.

Ans. Int. 29. I know of nothing else that I consider of benefit or advantage to the parties at issue in this cause, or either of them, or that I consider material to the subject of this examination or the matters in question in this cause.

D. A. CAMPBELL.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before the undersigned, U. S. commissioner of the United States circuit and district courts, in and for the western division of the southern district of the State of Mississippi, Capt. D. A. Campbell, who after being by me duly sworn, states that the foregoing answers made by him in answee to interrogatories from 1 to 29 inclusive are true and correct as stated, and that the said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this 4th day of May, 1904.

[SEAL.]

J. H. SHORT,
U. S. Com'r.

The above and foregoing has the following indorsement thereon, to-wit: # 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Deposition of D. A. Campbell.—Filed May 4/04. L. B. Moseley, clerk. J. H. Short, D. C.—Bryson & Dabney.

438 Deposition of Chas. Schuler.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Chas. Schuler, of Vicksburg Mississippi, to the following interrogatories and cross-interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defenda-t on the hearing of the above entitled cause as evidence, subject only to objections for irrelevancy and incompetency, notice, commission and all other matters of form being hereby waived, and the certificate of the officer before whom the affidavit *w*hall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shal- be su*g*ficient if in the following words and figures to-wit:

"Sworn to and subscribed before me this the — day of ——" and signed by the officer with proper dates fil-ed in the blanks above shown.

HUDSON & FOX.
SMITH, HIRSH & LANDAU.
W. J. VOLLER.

BRUSON & DABNEY.
O. W. CATCHINGS.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and business.

Int. 2. State in what business you were employed from August 1900 to January 1903.

Int. 3. If you state that you are now, or at any time since August 1900, have been employed in the fire department of the city of Vicksburg, Mississippi, state what position you held in said fire department.

Int. 4. State if you were present at the fire at the north east corner of Jackson and Cherry streets which occurred about the — day of ——.

Int. 5. State if you were present when the Lee Richardson residence on Cherry street was partially consumed by fire about the — day of ——,

439 Int. 6. State if you were present at the fire on Pearl street near the Advance Gin & Mill Co. about the — day of ——.

Int. 7. State whether or not you were present at what is known as the Mulligan fire on Mulberry street about the — day of ——.

Int. 8. State, if you know, whether or not at the above named fires the firemen opened the valves in the hydrants so as to turn on the full pressure of the water.

Int. 9. State, if you know, what particular person or individual opened the valves of these several hydrants, and if you do know what person or persons opened said valves, state whether or not he was experoenced as a fireman, and knew how to open the said valves, and when the same were fully opnrd so as to turn on all of the pressure possible.

Int. 10. State if you know the extent of the pressure at these ssveral fires, and whether or not it was adequate and sufficient to enable the fire department to properly fight the said fires to the best advantage.

Int. 11. State whether or not you have attended any other fires since August, 1900, and if you state that you have, state what was the condition of the waterworks sysrem ats to the pressure and whether or not the same was adequate and such as to enable the fire department to work to advantage in extinguishing said fires.

Int. 12. If you state that at any time or at any particular fire you found the pressure insufficient or inadequate state as fully as you can the actual conditions as to the extent of the pressure, as to how it compared with the pressure at other times, and as definitely as you can the number of pounds of pressure per square inch upon the water in the hydrants where the same was connected with the fire hose.

Int. 13. State, if you know, whether or not any officer or agent or employé of the water works company called the attention of the fire department or any member of the same, to the fact that the valve in

the hydrant had not been sufficiently opened to turn on the full pressure of the water, and if you state that such agent, officer or employé did so call the attention of the fire department to said va-ve not being fully open, state when and where such notice was given, and whether or not it was a fact true, and explain as fully as you can the actual condition and fact pertaining to the same.

Int. 14. If you know, state if you at any time observed the supply of water in the hydrants to be insufficient and inadequate for
440 the extinguishing of fires and not sufficient pressure for that purpose.

Int. 15. State when and where you so observed it ans for how long a period of time continuously did you observe it to be so inadequate and insufficient both as to quality and pressure.

Int. 16. State whether or not the fire department of the city of Vicksburg maintains at the engine house on Crawford street, in said city a pressure *guage* which indicates the pressure of the water in the water works mains at the elevation of the *guage* in said engine house, and if you state that said *guage* is, or has been so kept and maintained, state whether or not a record of its readings has been preser*b*ed and who has had charge of the said *guage* since it was so set up.

Int. 17. State if you know, whether the readings of said gauge have been correct and properly indicated the pressure of the water in the mains from the water works company.

Int. 18. State, if you know, whether or not the said *guage* is connected with the mains of the water works compan*t* by a valve or valves so that it can be shut off from said water works mains, and if you state that it is, or has been so connected, state whether or not the said valve or valves was at all time kept fully opened so as to indicate the full and complete pressure of the water in the water-works mains at all times.

Int. 19. State, if you know, whether or not Mr. M. O. Crumpler, at any time examined the said *guage*, and contended that the valve or valves connecting the same with the water works mains wad turned off so as to cut part of the pressure, and that by reason thereof the *guage* was not indicatin*f* the true and correct pressure of the water in the water works mains.

Int. 20. If you state that he did state fully the circumstances at the time the said Crumpler so appeared, and state fully whether o*t* not as a matter of fact the valve or valves so connecting the said ga-ge with the mains was turned so as to shut off part of the pressure, and if you state that it was, state why it was turned and who turned the same in such position and what was the purpose, if you know in so turning the said valve.

Int. 21. If *y*he said Crumpler appeared more than once to examine the said valve, give the particulars at each time, and all of the facts pertaining to the same.

Int. 22. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue,

in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the *the* same fully and at large in your answer.

441 Ans. Int. 1. Chas. Schuler, I am*m* 26 years of age. My place of residence is #604 N. Walnut street. I am at present and have been for some years past, engaged in the fire department of the city of Vicksburg.

Ans. Int. 2. I was emp*l*yed as at present in the fire department of the city of Vicksburg.

Ans. Int. 3. At first I was a driver, but for the past 2 years or longer, I have been assistant chief.

Ans. Int. 4. I was present.

Ans. Int. 5. Yes, sir.

Ans. Int. 6. Yes, sir.

Ans. Int. 7. Yes, sir.

Ans. Int. 8. I know of only one fact where the hydrant was not opened so as to turn on full pressure. That was the Tom Morrisey fire near the Advance gin. At all of the others the water was turned on to its full pressure. At the Jackson street fire I went around to all of the *pp*lugs myself, and saw that they were turned on so as to give full pressure.

Ans. Int. 9. At the Lee Richardson fire one of the plug- was opened by old man Andy Conner. He is an experienced fireman, and had been in the fire department for at least 20 years. He is now dead. The other plug used at the *E*ichardson fire was opened by Jimm-e Williams. I do not know exactly how long he had been employed in the fire department, but at least 2 or three years and was an experienced fireman.

Ans. Int. 10. At the fire corner of Jackson & Cherry streets, while the pressure still was not as good as it was at times, I think it was sufficient if we could have gotten to the fire. I was in charge of a line of hose consisting of only about 3 links or 150 feet, and my stream was fairly good, but the other streams came through longer lines of hose, probably some of them as much as 5 or 6 hundred feet, and in those the pressure was quite insufficient. There were 6 streams, I believe, at this fire, and mine, being the only short line of hose, was the only one that had anything like sufficient pressure.

At the Richardson fire I was at breakfast when the alarm was sent in and I got there a little late. I was in charge of a line of hose connected with the plug on the corner of Cherry St. and Shannons alley. I climbed up on the top of a first story balcony,
442 and handled the hose myself, and the pressure was not sufficient to raise the water to the point of the fire which was between the ceiling at the top of the second story, and the roof. I afterwards put Jimmie Williams in *c*garge of the line of hose, and I went back to see if the water was turned on so as to give full pressure and I found that it was. I returned and took charge of the hose myself, and found the pressure still quit insufficient. Some

time shortly afterwards the pressure was improved but not until considerable damage had been caused to the building.

Ans. Int. 11. There was some fires where there was no pressure. I remember one on Farmer and Clay streets, at Mr. R. E. Walne's. We succeeded in putting the fire out without the use of water, but there was absolutely no pressure on. Another fire was reported back of Slaughter's hall, in the same locality, where there was no pressure, and the engine had to be used, but I was not — at that time.

Ans. Int. 12. I have answered this question as definitely as I can in answer to the foregoing interrogatories.

Ans. Int. 13. I know of no such notice. If any agent or employé of the water works company ever at any time, notified the fire department that the water was not turned on so as to give the full pressure I have never heard of it, and certainly no one ever did so in my presence.

Ans. Int. 14. I cannot give the exact dates but on a number of occasions we have found the pressure of water quite insufficient, and frequently no pressure at all at the Washington engine house where our *guage* is kept. I can give you the number of times when the fire alarms were sent in and the engines were ordered out and herewith attach as Exhibit "A" to this deposition memoranda giving the several dates. The fire engines were never ordered out except when the pressure was insufficient.

Ans. Int. 15. I cannot give the exact dates, but on one or more occasions we have been 2 or 4 days without water, and on quite a number of occasions we have found the pressure insufficient for fire protection.

Ans. Int. 16. The fire department maintained a pressure *guage* at the Washington engine house on Crawford street, and has maintained it since some time in the fall or winter of 1901–'02, shortly after Mr. Crumpler took charge of the waterworks plant. I think it was about Jan'y 1902.

Ans. Int. 17. I would say that the *guage* readings have been about correct, but I am satisfied that the *guage* shows more pressure
443 than we actually have.

Ans. Int. 18. I had the first 5 or 6 months after it was set up In fact I set it up myself, except as to the plumping work. Printed instructions as to how it was to be set up, and kept were sent along with the *guage*, and I followed these instructions absolutely in maintaining the same. The instructions required that the valve turning pressure of the water on to the *giage* be turned to such a point as to steady the needle. To do so I found that I could not leave the valve wide open. When I opened the valve wide the needle vibrated so as to make a broad line. In fact it was nothing but a blot or blur on the paper sometimes ⅜ of an inch wide. If we read from the outside of this blurred line, it would indicate a difference in pressure of nearly 20 pounds from a reading taken from the inside sure *as* nearly 20 pounds from a reading taken from

the inside of the line. When the needle was steady, it would give a reading somewhere between the readings indicated vy the outside of the blurred line, and the inside of the same, that is to say, if I turned the valve so as to steady the needle the pressure indicated by the *guage* would be just about midway between the reading indicated by the outside and inside of the blurred line. The outside of the blurred line would read about 10 # more pressure than the steady line, and the inside would read abput 10 # less pressure. I attach hereto as Exhibit "B" to my deposition, disks or sheets showing the readings *if* the *guage* when the valve was open and when it was partially closed so as to steady the needle, the wide line being the reading when the valve was open, a-d the narrow line being the reading when the valve was partially closed. It required a very slight change in the valve to steady the needle. I do not think any pressure whatever was taken off by turning the val*be* so as to steady the needle.

Ans. Int. 19. I understand that Mr. Cru-pler came up to the engine house and examined this *guage* at least once while I had charge of the same. I had gone home to dinner and when I got back I found the *b*alve was turned so as to make the broad line indicated on the sheets attached as exhibit to my answer to question 18. *U*I then went down to see the *guage* kept by Mr. Crumpler, and to see how his was operated, and whether or not it made the same broad line as the city's and I found that his *guage* was regulated just as I had had mine regulated before he changed it. I reported the matter to the fire chief, Mr. Marks, but he told me to let the *guage* alone,
444 and let it read just as Mr. Crumpler had fixed it Since then the valve to the city's *giage* has been kept fully opened.

Ans. Int. 20. In answer to this interrogatory, I would say that the valve on the city's pressure *guage* has never been turned so as to shut off any part of the pressure. In turning it so as to steady the needle as required by the printed instructions which came with the *guage* such slight change was required that I do not think it effected the pressure in the least. I know that no appreciable part of the opening which permitted the water to reach the *guage* was closed. It was just turned enough to prevent vibration and the pounding of the water caused by the pumping.

Ans. Int. 21. If Mr. Crumpler ever came about the *guage* but the one time I do not know it. I know that from that time on the *guage* was kept just as he requested.

Ans. Int. 22. I can think of nothing else at present that I consider of advantage or benefit to the parties at issue, in this cause, or either of them or that I consider material to the subject of this examination, or the matters in question in this cause.

C. SCHULER.

STATE OF MISSISSIPPI,
Warren County.

Personally appeared before the undersigned, U. S. commissioner of the United States circuit and district courts, in and for the western division of the southern district of Mississippi, Chas. Schuler, who after being by me duly sworn, states that the foregoing answers made by him to interrogatories from 1 to 22 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter in the foregoing interrogatories.

Witness my hand and official seal, this the 4th. day of May, 1904.

[SEAL.]

J. H. SHORT,
U. S. Com'r.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Deposition of Chas. Schuler. Filed May 4/04. L. B. Moseley, clerk. J. H. Short, D. C.

445 Deposition of W. O. Smith.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Mr. W. O. Smith of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories, when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to-wit: "Sworn to and subscribed before me this — day of ——," and signed by the officer, with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you are, state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if
446 you state that you did, state what part you took in the same, and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price said system of waterworks offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor and aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnish- to said mayor and aldermen, or to the

inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water
447 Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system, at any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as y-u can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as y-u can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for h-w long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

—. 17. State, if you know, whether or not the passage of
448 said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavor to

disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if you know, whether the defendant procured the passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do anything to procure the passage of said act, state exactly what was done by the defendant with that end in view?

Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of an inf-ammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg, against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspapers in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission
449 for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same.

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or watercloset therein being connected with said

sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active cooperation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R. Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

450 Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

451 Answers of W. O. Smith to Interrogatories.

Ans. 1. W. O. Smith, over the age of 21 years, residence of Vicksburg Miss.

Ans. 2. I do not remember when I was first elected, but some time about 1890, and I have served continuously since then with the exception of two terms, or 2 years each, one of which included the years of 1898 and 1899.

Ans. 3. I was not a member of the board at that time and therefore took no action whatever in procuring the passage through the legislature of the bill mentioned.

Ans. 4. Nothing.

Ans. 5. I do not know.

Ans. 6. The Vicksburg Water Supply Company made no offer to sell, that I know of. The Vicksburg Water Works Company did offer to sell their plant, but what the price was now I can't remember. I thought myself at the time it was too high for the city to purchase, and saw no chance for the city to buy it. I believe said offer was open for acceotance for several weeks.

Ans. 7. I know nothing about any such scheme.

Ans. 8. None that I remember.

Ans. 9. There was always a complaint of the muddy water, but no complaint as to pressure.

Ans. 10. I think I did.

Ans. 11. I do not remember of any instance in which the water supply company closed down or failed to furnish water.

Ans. 12. The service on the whole since the water works company took charge has been unsatisfactory, and we have frequently been with out water.

Ans. 13. I do not remember how often, but several times, and to the best of my knowledge at times for 3, 4 or 5 days. I think about a week at one time.

Ans. 14. That I can not answer. I am not on the fire committee and have had no personal observation in that regard I have heard it complained of, but of my own knowledge I cannot speak.

Ans. 15. I was.

Ans. 16. I voted for the said resolution because the water works company was giving, as I considered it, very poor service,
452 and I thought it was well for the city to own her own water-works, which the city could not do, provided it would have to pay the water works company as it had been doing for fire protection, and there fore I desired to have the question of whether or not there was a contract between the city and the water works company tested, hence I voted for the resolution solely to raise that question.

Ans. 17. It was not in pursuance of any such scheme to force the water works to sell out, but the real purpose is stated in answer to interrogatory 16.

Ans. 18. There was no such conspiracy.

Ans. 19. As aforesaid I know nothing about the passage of said act.

Ans. 20. I know nothing about —. I never heard of any such purpose.

Ans. 21. None to my knowledge. I know I did not.

Ans. 22. Not to my knowledge.

Ans. 23. I am satisfied the board of mayor & aldermen granted such permission on one or more occasions.

Ans. 24. The water supply Co. did have knowledge of such permission and I never heard of any objection on the part of said company.

Ans. 25. I would say that I presume they knew, as the water supply company had to furnish the water. I know of no other means by which they could have known.

Ans. 26. I can say that there were such closets and I suppose the water supply company had knowledge of the same, that the said knowledge was obtained in the same way as in the case of closets where permission was given by the board of mayor and aldermen.

Ans. 27. I cannot say that the water company had knowledge in each and every instance.

Ans. 28. They could not.

Ans. 29. I know of nothing else that I consider material or of benefit to either party.

W. O. SMITH.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before the undersigned United States commissioner, in and for the western division of the southern district of

the State of Mississippi, W. O. Smith, who, after being by me duly sworn, states that the foregoing answers made by him in answers to interrogatories from 1 to 29 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

J. H. SHORT,
U. S. Com'r.

[SEAL.]

March 15, 1904.

453 The above and foregoing has the following indorsement thereon, to-wit:—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Deposition of W. O. Smith—Filed 3/21/04. L. B. Moseley, clerk. J. H. Short, D. C.

Deposition of Dave Montgomery.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Mr. D. Montgomery, of Vicksburg, Mississippi, to the following interrogatories and cross interrogatories when made and verified by oath before any officer authorized to administer oaths, may be read by the defendant on the hearing of the above entitled cause, as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words, and figures, to-wit: "Sworn to and subscribed before me this — day of ——," and signed by the officer, with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, place of residence and occupation.

Int. 2. State if you are a member of the board of mayor and aldermen of the city of Vicksburg, and if you state that you are,

state when you were first elected a member of said board, and when you were sworn in and assumed the duties of said office, and whether or not you have since said date continually filled said office.

Int. 3. State whether or not you took any part in procuring the passage through the legislature of the State of Mississippi, of that certain bill authorizing, among other things, the mayor and aldermen of the city of Vicksburg to issue $150,000 of bonds for the purchase or construction of a water works plant in said city, and if you state that you did, state what part you took in the same,
454 and state whether or not you were acting in your capacity as alderman, or simply in your capacity as a resident and citizen of the said city of Vicksburg.

Int. 4. State exactly what you did in reference to the passage of said bill.

Int. 5. State, if you know, whether or not Chester R. McFarland while he was superintendent and manager of said waterworks in the city of Vicksburg, took any part in the passage of said bill, if you state that he did, state exactly what action was taken by the said McFarland with reference to said bill at said time.

Int. 6. State, if you remember, whether or not the owner of the water works system in Vicksburg offered to sell said system to the mayor and aldermen of Vicksburg, and if so, at what price — said system of waterwords offered for sale to the said mayor and aldermen and how long was said offer open for acceptance.

Int. 7. State, if you know, whether or not there was any scheme or plan at any time on the part of the owner or owners of the water works system at Vicksburg to sell the same to the said defendant at any price, and if you state that there was, state fully and definitely how such scheme came to your knowledge, and the price at which it was sought to dispose of said system of water works to the said defendant, and when and how long such scheme existed.

Int. 8. State, if you know, whether there was any disagreement between the Vicksburg Water Supply Company and the mayor and aldermen of Vicksburg at any time prior to August, 1900, in regard to the service being rendered by the Vicksburg Water Supply Company, and if you state that there was, state the nature of such disagreement.

Int. 9. State, if you know, whether there was any complaint either upon the part of the mayor and aldermen of the city of Vicksburg or any of the residents and citizens of said city as to the quality and character of water furnished to said mayor and aldermen, or to the inhabitants of said city, and if you state that there was, state the nature and extent of such complaint.

Int. 10. State, if you know, whether the Vicksburg Water
455 Supply Company, while it owned and operated the water works system at Vicksburg, furnished a sufficient supply of water and sufficient pressure for fire protection in said city.

Int. 11. State, if you know, whether the Vicksburg Water Supply Company, while it owned and operated said water works system, at

any time failed to furnish water to the mayor & aldermen of said city of Vicksburg, and the inhabitants of said city, and if you state that it did, state as fully as you can how often it so failed, and for how long a period of time in each instance was the said plant closed down, or so failed to furnish water.

Int. 12. State as fully as you can what has been the character of the service rendered by the Vicksburg Water Works Company since it became the owner of said Vicksburg water works system.

Int. 13. State, as near as you can, how often the plant has been closed down since August, 1900, and for what length of time in each instance.

Int. 14. State whether or not, since August 1900, the said Vicksburg Water Works Company has furnished water under sufficient pressure for fire protection in said city, giving full particulars as far as you can as to whether or not the pressure furnished by the said company has been sufficient, and if you state that it has, at any time, been insufficient, state as fully as you can how often you have known it to be so and to what extent of insufficiency, and for how long a period of time in each instance it has remained insufficient.

Int. 15. State if you were present in the council chamber of the mayor and aldermen of the city of Vicksburg on November 7th, 1900 when said mayor and aldermen adopted a resolution in words and figures as follows: "That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of water hydrants, but from and after August 1900, they will pay a reasonable compensation for the use of said hydrants."

Int. 16. If you state that you were present, state whether or not you voted for said resolution, and if so, why you voted for the same.

Int. 17. State, if you know, whether or not the passage of
456 said resolution was in pursuance of a scheme to force said water works company to sell to defendant its water works system in the said city of Vicksburg, and if you state that it was not, state the real purpose of said resolution.

Int. 18. State, if you know, whether or not there was any conspiracy between the defendant, The Mayor and Aldermen of the City of Vicksburg, and the officers of said city to injure and destroy the credit of the Vicksburg Water Works Company, or to destroy the value of its property, or to abrogate and take away the franchise and contract rights of said company, or to deny liability on the part of said city, under its said contract, or to unlawfully endeavore to disable said company, from carrying on its business or to coerce it to sell its water works to the said defendant for an inadequate price.

Int. 19. State, if y-u know, whether the defendant procured the passage of the act of March 7th, 1900, authorizing the city of Vicksburg to issue bonds and purchase or construct a water works system, and if you state that the defendant did do any thing to procure the passage of said act, state exactly what was done by the defendant with that end in view?

Int. 20. State, if you know, whether or not the defendant procured the passage of said act of the legislature for the purpose of coercing said water works company to sell its water works system in said city of Vicksburg for an inadequate price, or to otherwise injure the said Vicksburg Water Works Company.

Int. 21. State if the mayor and aldermen of the city of Vicksburg procured the publication of an- inflammatory articles against the said water works company in any of the Vicksburg papers.

Int. 22. State, if you know, whether or not there was a conspiracy originated and circulated by the officers and agents and confederates of the city of Vicksburg, against the Vicksburg Water Works Company, and whether or not in pursuance of said conspiracy, inflammatory and untruthful articles were written and published in and by the newspaper in said city of Vicksburg or any of them, in regard to the said water works company.

Int. 23. State, if you know, whether or not the mayor and aldermen of the city of Vicksburg at any time granted permission
457 for the offal and excrement from water closets and other sewerage, to be emptied into and through the sewer under Washington street in the said city of Vicksburg.

Int. 24. If you state that such permission was granted state whether or not the Vicksburg Water Supply Company, through its officers and agents, had any notice or knowledge of such permit or permits as may have been granted, and if you state that said water supply company did have such knowledge, state whether or not said water supply company entered any protest or objection to such permit or permits being granted.

Int. 25. State what means the said water supply company had of knowing exactly how many and what water closets were so connected with said sewer and discharged into and through the same.

Int. 26. State, if you know, whether any closets or buildings were connected with the said sewer and discharged into and through the same other than those which received from the mayor and aldermen of said city of Vicksburg such permits, and if you state that they were, state if the same Vicksburg Water Supply Company had any knowledge of such connections, and if you state that it did, state how you know it had such knowledge.

Int. 27. State, if you know, whether or not the Vicksburg Water Supply Company had full knowledge in each and every instance of every building or water closet therein being connected with said sewer, and discharging offal and excrement into and through the same, and whether or not said water supply company tacitly consented to such connection.

Int. 28. State if the mayor and aldermen by their permit could have caused the said excrement and offal to be emptied into and discharged through said sewer except by the consent and active cooperation of the water works system in the said city of Vicksburg, whether the same was being run and operated by the Samuel R.

Bullock & Company, the Vicksburg Water Supply Company or the Vicksburg Water Works Company.

458 Int. 29. Do you know or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

459 Answers of David Montgomery to Interrogatories.

Ans. 1. David Montgomery residence city of Vicksburg, over the age of 21 years, bookkeeper.

Ans. 2. The fall of 1893, I think, and I have since said time been continuously a member of said board.

Ans. 3. To the best of my recollection, I voted in the board of mayor and aldermen directing the city attorney to prepare a bill to be presented to the legislature authorizing the city of Vicksburg to issue bonds for the purpose of building sewers and empowering it to buy or build a water works plant.

Ans. 4. Nothing more than stated above in answer to interrogatory 3.

Ans. 5. I know nothing of what was done by McFarland in regard to the matter.

Ans. 6. Nothing was done so far as I know by the Vicksburg Water Supply Company. There was some offer by the Vicksburg Water Works Company, but the terms and conditions I do not remember.

Ans. 7. There was some suggestion of a scheme to build a city hall sewerage, and to turn over the water works plant for the bonds authorized to be issued, but I do not remember definitely enough to undertake to state the same.

Ans. 8. There was no such disagreement.

Ans. 9. There was no official complaint that came to the mayor and aldermen, but various complaints came to us in the nature of street talk in regarf to tge muddiness of the water being furnished by the Vicksburg Water Supply Co.

Ans. 10. I was chairman of the fire committee during the time the Vicksburg Water Supply Company was furnishing water and there were times when the water was insufficient, but I think there was always a same supply of water.

Ans. 11. My recollection is that the Vicksburg Water Supply Company failed to furnish water on one particuoar occasion, but at my own residence I think we had water at all times.

Ans. 12. The Vicksburg Water Works Company, since it has been in charge has had several break downs.

Ans. 13. Several times. I am satisfied 3 or more times.

460 Ans. 14. Of my own knowledge I know nothing in regard to the sufficiency of pressure for fire protection.

Ans. 15. I was.

Ans. 16. My recollection is I voted against it.

Ans. 17. I never understood the object of that resolution.

Ans. 18. I never heard of any such conspiracy, and I don't believe there ever was any.

Ans. 19. I think the board of mayor and aldermen did what they could to procure the passage of said act. I am satisfied that it was the sense of the board that the said act be passed.

Ans. 20. There was no intention to do anything to injure the water works company, or to force it to sell to the city.

Ans. 21. No, board of mayor & aldermen of the city of Vicksburg did not procure the publication of any inflammatory articles against the Vicksburg Water Works Company, or have anything to do with such.

Ans. 22. There was no such conspiracy.

Ans. 23. Such permission was granted on one or more occasions. I don't remember how many.

Ans. 24. I do not know whether the Vicksburg Water Supply Company had notice or knowledge of such permission, certainly there was no protest or objection made to us until after Mr. Crumpler took charge of the water works system.

Ans. 25. The water company ought to have known better than anybody because no body could connect without using water furnished by the water company.

Ans. 26. I do not know.

Ans. 27. The water supply company ought to have known of the connections made for that purpose.

Ans. 28. I take it that the water supply company must have known and co-operated, otherwise no water would have been furnished for that purpose.

Ans. 29. I know of nothing else that I consider to be of interest or benefit to either party in this cause.

D. MONTGOMERY.

461 STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before the undersigned, United States commissioner, in and for the western division of the southern district of the State of Mississippi, David Montgomery who after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 29 inclusive, are true and correct as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this the 21st day of March, 1904.

J. H. SHORT,
U. S. Com'r.

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Deposition of D. Montgomery. Filed 3/21/04 L. B. Moseley, clerk, J. H. Short, D. C.

462 Deposition of W. H. Bruser.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

It is agreed that the answers of Mr. W. H. Bruser, of Vicksburg Mississippi, to the following interrogatories and cross-interrogatories when made and verified by oath before any officer authorized to administer oaths may be read by the defendant on the hearing of the above entitled cause as evidence subject only to objections for irrelevancy and incompetency, notice, commission and all other matter of form being hereby waived, and the certificate of the officer before whom the affidavit shall be made, shall be conclusive evidence of his authority to administer oaths, it being agreed that the said certificate shall be sufficient if in the following words and figures, to-wit:

"Sworn to and subscribed before me, this — day of ——," and signed by the officer with proper dates filled in the blanks above shown.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.
HUDSON & FOX,
For Complainant.

Direct Interrogatories Propounded by Defendant.

Interrogatory 1. State your name, age, and place of residence.

Int. 2. What is your business or occupation and how long have you been engaged in the same.

Int. 3. State whether or not that you ever at any time made connections with the waterworks mains in the city of Vicksburg, so as to supply water to consumers.

Int. 4. If you state that you made such connections, either individually, or through your agents and employés, state from whom you received orders or authority to make such connections, whether from the water works comoan*t*, the consumers, or both.

Int. 5. State if at any time you tapped the mains of the said water works company, so as to connect the said water works with water closets, and if you state that you did, state if you did the
463 plumbing and other work necessary for the discharge of said closets?

Int. 6. State whether or not any of the said closets so connected with the water works by you were made to discharge excrement and offal from the same into the underground sewer on Washington street in the city of Vicksburg?

Int. 7. State from whom you obtained your orders or authority to so connect said water closets with said sewer.

Int. 8. State whether or not the superintendent or general manager of the water works company was cognizant of the fact that you were making connections for the discharge of sewerage matter from water closets into the said sewer under Washington street, and if you state that he was, state how you know whether or not he had such information?

Int. 9. State whether or not the water works company, or any of its agents or officers or employés gave you permission to connect water closets that discharged into and through the said sewer under Washington street, with the waterworks mains.

Int. 10. State if it is feasible or even possible for the excrement and offal from water closets to be discharged into and through the said sewer under Washington street, except by the use of water from the water works company.

Int. 11. State whether or not the water works company at any time through its agents or officers, or employés, made any objection to you in regard to connecting water closets with the said sewer under Washington street.

Int. 12. State, if you know, whether or not the water works company through its agents, officers and employés, was not openly and notoriously for a number of years preceding the change of management from the water supply company to the water works company, encouraging the use of the Washington Street sewer as a means of discharge for water closets?

Int. 13. State whether or not if in each instance in which a water closet was so connected as to discharge the excrement and offal from it into the said sewer, that the management did not have full knowledge of such connections and discharge and openly encourage the same.

Int. 14. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at
464 issue in this cause, or either of them or that can be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. J. VOLLOR &
BRYSON & DABNEY,
For Def't.

465 Answers to Interrogatories Made by W. H. Bruser.

Ans. 1. W. H. Bruser, age 42 years, residence Vicksburg, Miss.

Ans. 2. Plumbing tin and iron work, about 25 years.

Ans. 3. Have never made connections with water works mains Connections from mains to curb lines are now made by J. B. Smith, and were formerly made by Jno. J. Mulligan.

Ans. 4. Did not connect with mains.

Ans. 5. No.

Ans. 6. I have put up water closets that connected with the Washington Street sewer, but unless the supt. of waterworks actually saw the work done, he would not from the plumber's report, or from his application to get a permit, know where the closet emptied. The plumber reports the number and kind of fixtures in a house, but does not report where they waste into.

Ans. 7. Several times from the aldermen in session, other times without their permission.

Ans. 8. Whenever I wanted to do plumbing work of any description, it is first necessary to go to the waterworks office and make a written application for a permit to do work beyond the curb line. This is kept as a record until the completion of the work. When the work is completed, I make out a report stating the number and kind of fixtures placed in the building, but do not either in the application or report state where the fixtures empty. When this report is filed with the water works company they endorse on the permit, originally given for this work, that the report was filed on such a day (dating it day reported).

Ans. 9. Water Co. gave permit to do work, but did not from my application for permit, or my report on work done, know that they emptied into the Washington St. sewer.

Ans. 10. Hardly possible unless the party put up an elevated tank.

Ans. 11. Don't think they did as they could not know from my report that I was connecting with it.

Ans. 12. Not that I know of.

Ans. 13. I am satisfied they did not in all cases, as reports didn't show they emptied there.

466 Ans. 14. I know nothing further of importance in regard to this case.

W. H. BRUSER.

STATE OF MISSISSIPPI, }
Warren County. }

Personally appeared before me, the undersigned, United States commissioner in and for the western division of the southern district of the State of Mississippi, W. H. Bruser, who, after being by me duly sworn, states that the foregoing answers made by him in answer to interrogatories from 1 to 14, inclusive, are true and cor-

rect as stated, and that said answers correctly state and set forth his knowledge of the subject matter contained in the foregoing interrogatories.

Witness my hand and official seal, this the 10 day of March, 1904.

J. H. SHORT,
U. S. Commissioner.

[SEAL.]

The above and foregoing has the following indorsement thereon, to-wit:—#41. Vicksburg Water Works Co, *vs.* Mayor & Aldermen of the City of Vicksburg.—Deposition of W. H. Bruser.—Filed 3/21/-904. L. B. Moseley, clerk. J. H. Short, D. C.

And this ended the reading of all of the depositions.

467 Final Decree.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI. } Equity. No. 41.

This day this cause came on to be heard in accordance with the motion of complainant and defendant filed January 12, 1904, and the order of this court on the hearing of said motion rendered the said January 12, 1904, upon the original bill, amended and supplemental bill, exhibits answer of defendants, proof and exhibits and the court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises and being satisfied that the complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:—

First. That the defendant, The Mayor & Aldermen of the City of Vicksburg, be and is hereby perpetually enjoined from abrogating or taking away or from, assuming to abrogate or take away the franchises or contract rights of complain-t under and by virtue of the ordinance, franchise or contract of said defendant entitled "An ordinance to provide for a supply of water to the city of Vicksburg in Warren county, Mississippi, and to its inhabitants contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said city of Vicksburg an option to purchase the said works" ordained the 18th day of November 1886, approved by John W. Powell, mayor, November, 19, 1886, being the ordinance contract, and franchise marked Exhibit "B," to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, con-

tract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by defendant thereunder.

Third. That said defendant be and is hereby directed to
468 rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows:—

Resolved, "That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor & aldermen deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises."

And also to rescind the ordinance or resolution of said defendant adopted the 7th day of February, 1901, when the said defendant adopted the report of the committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the legislature of the State of Mississippi, approved March 9, 1900, and from issuing bonds under and by virtue of said act or any other act, or ordinance for the purpose of erecting water works of its own during the period prescribed in said ordinance contract and franchise.

Fifth. That the said defendant refrain from constructing water works of its own until the expiration of the period prescribed in the said ordinance contract and franchise dated 18th of November, 1886.

Sixth. That the said defendant be and is hereby required to pay all monies due or owing or that may hereafter be due or owing to said complainant under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and hereby is perpetually enjoined from making or adopted any resolution or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise, until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be and is hereby enjoined from permitting any further connections for the conveyance of sewerage or excremental matter, with the storm sewer or culvert located on Washington street, city of Vicksburg, and the defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the Yazoo or

Mississippi river below the intake pipe of complainant, provided that if the defendant is unable to construct or extend said sewer
469 or culvert and construct said outlet within twelve months from this date, it can apply to this court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed.

Ordered, adjudged and decreed this the 18th day of May, 1904.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit:—# 41. Equity—Vicksburg Water Co. *vs.* Mayor & Aldermen of City of Vicksburg—Ent. M. B. No. 8. folio 357, (at Jackson) Filed and ent. M. B. 2, p. 58 *et seq.* May 18th, 1904. L. B. Mosely, clerk, J. H. Short, D. C.

Petition by Complainant to Make Corrections in Final Decree.

In the Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY *vs.* MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Mississippi.	Equity. No. 41.

To the Honorable H. C. Niles, judge:

Your petitioner, The Vicksburg Water Works Company, complainant in the above cause, would respectfully show unto your honor that in section "Second" of the decree rendered by the court in this cause on the 18th day of May, 1904, reads as follows:

"Second. That said ordinance, contract and franchise be and is hereby declared and held to be *and* in every respect legal valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privilege and benefits acquired by defendant thereunder."

Your petitioner would further show that the word "defendants" immediately preceding the final word, "thereunder," of said section, is a clerical error, and was written by reason of said error for the word "complainant," which is the proper word in the said place in said section and was intended to be written there.

The premises considered your petitioner respectfully prays for an order of your honor correcting the said mistake so as to make the said section read as follows:—

Second. That said ordinance, contract and franchise be and
470 is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privilege and benefits acquired by complainant thereunder.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Solicitors for Complainant.

The above and foregoing has the following indorsement thereon to-wit:—#41. Equity—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg. Petition to make corrections in order.—Filed May 25th, 1904. L. B. Moseley, clerk, J. H. Short, D. C.

Order Making Corrections in Final Decree.

Circuit Court of the United States, Southern District of Mississippi, Western Division Thereof.

VICKSBURG WATER WORKS COMPANY *vs.* MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.	Equity. No. 41.

Application having been made by the complainant in this cause for an order correcting the decree rendered in this cause on the 18th day of May, 1904, so as to strike out the word "defendants" immediately preceding the final word thereunder of section "Second," and insert instead thereof the word "complainant," so as to make the said section read as follows: "Second: That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder"; and the court being satisfied that the said word "defendants" was inserted through clerical mistake, and that the said word "complainant" is the proper word and the word intended to be written at the said place, and therefore that the said correction is in accordance with the facts:

It is hereby ordered, adjudged and decreed that the clerk
471 of *of* this court make the said correction.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon to-wit: Vicksburg Water Works Co. *vs.* Mayor & Aldermen of Vicksburg.—Order authorizing corrections.—Filed May 25, 1904. Entered M. B. 2 p. 63. L. B. Moseley, clerk. J. H. Short, D. C.

Petition of Defendant for Appeal.

In the Circuit Court of the United States of the Western Division of the Southern District of Mississippi.

THE VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

The above named respondent, The Mayor & Aldermen of the City of Vicksburg, conceiving itself aggrieved by the final decree entered in the above entitled cause on the 13th day of May, 1904, hereby appeals from said final decree and prays that this its appeal to the Supreme Court of the United States may be allowed and that a transcript of the record, proceedings and papers upon which said final decree was made, duly authenticated, may be sent to said Supreme Court of the United States.

And now, at the time of filing this petition for appeal, said respondent, The Mayor & Aldermen of the City of Vicksburg, appellant, files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the Supreme Court of the United States. And your petitioner will ever pray.

THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG, Appellant,
By —— ——, Solicitors.

The above and foregoing has the following indorsement thereon, to wit: # 41. Equity. In circuit court of U. S. for W. division of S. district of Miss. Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Petition for appeal.—Filed Nov. 9, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

Assignment of Errors.

VICKSBURG WATER WORKS COMPANY, Complainant,
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, Respondent. } No. —.

472 Now comes the respondent and files the following assignment of errors upon which it will rely.

I.

That the United States circuit court erred in allowing the City Water Works & Light Company to withdraw its petition filed in said cause on December 2nd, 1903, whereby it prays to be admitted as a party complainant, and also in allowing the said City Water Works & Light Company to withdraw its original bill in the nature of the supplemental bill filed in said cause on the — day of May, 1904, and the said court erred in allowing the complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill, the order authorizing the withdrawal of said several papers being in words and figures as follows, to-wit:

"This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2, 1903, and its original bill in the nature of a supplemental bill filed May 5th, 1904, with all exhibits and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order adjudge and decree that leave be granted as prayed for to *to* withdraw said petition, bill, exhibits and written consent.

II.

The court erred in refusing to allow respondent to file a supplemental answer setting up that the said City Water Works & Light Company was an essential party complainant and that unless it should be made a party complainant the court could not proceed but must dismiss the bill.

III.

The court erred in refusing to continue the said cause on motion of respondent after it had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill whereby it sought to be named a party complainant in said cause and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

IV.

The court erred in granting the complainant's motion to strike from the evidence interrogatories # 135. 136, 137. 138, 139,
473 140, 141, 142, 143, & 147 propounded to witness M. O. Crumpler and the answers thereto, the said interrogatories and answers being as follows, to-wit:

"X Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Water Works & Light Company.

X Int. 136. It has now no property of any kind whatever?

Ans. No sir.

X Int. 137. What business is it now engaged in carrying on?

Ans. Nothing.

X Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

X Int. 139. What corporate act or acts, if any, has it done since the first of December, 1903.

Ans. I don't know of any except in winding up its business.

X Int. 140. If it has no property and is carrying on no business, what further business has it to wind up?

Ans. It is winding up the accounts that belonged to the company.

X Int. 141. It does then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

X Int. 142. Then when you said that it had no property, you meant that it had no tangible property—I meant that it had no water works or anything of that kind.

Ans. Yes sir.

X Int. 147. But it does have claims, rights, choses in action, and things of that kind, unwound up.

Ans. Yes sir.

X Int. 147. You are the manager of the new company, the City Water Works & Light Company, the same as you were the manager of the old company, the Vicksburg Water Works Company are you not?

Ans. Yes sir."

V.

The said court erred in rendering the final decree against respondent because the said decree is contrary to the law and the facts as stated in the pleadings and proof before said court.

VI.

The said court erred in perpetuating by its final decree the
473½ injunction against respondent restraining it from erecting a water works plant of its own.

VII.

The court erred in granting a mandatory injunction against respondent commanding respondent within one year to build
474 and construct a sewer whereby the sewer now existing on Washington street in the city of Vicksburg should be extended and made to discharge at some point on the Mississippi river south of the intake pipe of complainant.

In order that the foregoing assignment of errors may be and appear of record, the respondent presents the same to the court, and prays that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded.

All of which is respectfully submitted.

—— ——,
Sols. for Respondent.

The above and foregoing has the following indorsement thereon to-wit:—41 Equity—In the circuit court of the U. S. for western division of southern district of Mississippi.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Assignment of errors.—Filed the 8th day of November, 1904. L. B. Moseley, clerk.

Order Allowing Appeal.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

Coming on this day to be heard at chambers the petition of The Mayor & Aldermen of the City of Vicksburg, respondent in the above styled cause, praying for an appeal to the Supreme Court of the United States from the final decree made and entered in said cause on the 13th day of May, 1904, and the court having read and considered said petition; it is ordered and decreed that the said petition be granted upon the said respondent entering into bond in the sum of one thousand dollars payable to The Vicksburg Water Works Company, complainant in this cause, conditioned to pay and satisfy whatever decree may be rendered against the said Mayor & Aldermen of the City of Vicksburg by the Supreme Court of the United States that citation issue to the said complainant to be and appear before the Supreme Court of the United States on the — day of ——, 1904, to show cause, if any it can, why the decree of this court should not be reversed and remanded.

H. C. NILES,
District Judge.

475 The above and foregoing has the following indorsement thereon to-wit: #41. Equity. Vicksburg Water W'ks Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Order allowing appeal.—Filed Nov. 9, 1904, L. B. Moseley, clerk, J. H. Short, D. C. Ent. Eq. Or. Book No. 1. pp. 48 & 49.

Appeal Bond.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

Know all men by these presents, that we, The Mayor & Aldermen of the City of Vicksburg as principal, and Title, Guaranty & Trust Company of Scranton, Pa., a surety company, are held and firmly bound unto the above named Vicksburg Water Works Company in the sum of ($1000.00) one thousand dollars, to be paid to the said Vicksburg Water Works Company as its interest may appear, to which payment, well and truly, to be made, we bind ourselves jointly and severally, and our and each of our successors and assigns, jointly by these presents.

Sealed with our seals and dated this 8th, day of November, 1904.

Whereas, the above named respondent, The Mayor and Aldermen of the City of Vicksburg, have prosecuted its appeal to the Supreme Court of the United States to reverse the final judgment and decree rendered in the above entitled cause by the said circuit court of the United States for the western division of the southern district of Mississippi; now, therefore, the condition of this obligation is that if the above named, Mayor & Aldermen of the City of Vicksburg shall prosecute its said appeal to effect and answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise in full force.

THE MAYOR AND ALDERMEN OF
CITY OF VICKSBURG.
W. L. TROWBRIDGE, Mayor.
TITLE GUARANTY & TRUST CO.,
By PAXTON & O'NEIL, Agents, &
BRYSON & DABNEY, Att'ys. [SEAL.]

In presence of.

——— ———.

Approved, this Nov. 8th 1904.
H. C. NILES, Judge.

476 The above and foregoing has the following indorsement thereon to-wit:—# 41. Equity. In circuit court of U. S. for W. division of southern district of Miss.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Appeal bond.—Filed Nov. 9, 1904. L. B. Moseley, clerk, J. H. Short, D. C.

Motion Asking that Clerk be Directed to Send up Original Automatic Water Pressure Gauge Sheets.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS COMPANY
vs.
MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

Now comes The Mayor & Aldermen of the City of Vicksburg, appellant in the above styled cause, and moves the court for an order directing the clerk of said court to omit from the transcript of the record in said cause, to be prepared by him for the Supreme Court of the United States, the sheets or disks of paper showing the readings of the automatic water pressure gauges maintained in the office of M. O. Crumpler and the Crawford Street engine house, the said sheets being exhibits to the depositions of M. O. Crumpler and Charles Schuler, read in evidence in the trial of said cause, and in lieu of a transcript of said sheets that said clerk be directed to send up to the clerk of the Supreme Court the original sheets along with his transcript of the remaining parts of said record.

The above and foregoing has the following indorsement thereon, to-wit: #41. Equity. In circuit court of U. S. western division of southern dist. of Miss.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg.—Motion for leave to omit water pressure gauge sheets from record.—Filed Nov. 9, 1904. L. B. Moseley, clerk. J. H. Short, D. C. Ent. Eq. Order Book No — at pp. 47 —.

Order Directing Clerk to Send up Original Automatic Water Pressure Gauge Sheets.

VICKSBURG WATER WORKS COMPANY
vs.
THE MAYOR & ALDERMEN OF THE CITY OF VICKSBURG. } No. 41.

477 The above styled cause came on this day to be heard at chambers on the motion of The Mayor & Aldermen of the City of Vicksburg, appellant, to have certain papers forming part

of the record in said cause; to-wit, the sheets showing the readings of the automatic water pressure gauges, omitted from the transcript of said record on appeal to the Supreme Court of the United States and in lieu of such transcripts that the original papers be sent up to the said Supreme Court, and the court having read and considered said motion and being of the opinion that it is impracticable to make a transcript of the said sheets, it is ordered that the said sheets be omitted from the transcript of the said record and in lieu of such transcript that the original sheets be sent up to the clerk of the Supreme Court under proper certificate along with the transcript of the other parts of the said record, and the clerk of this court is hereby authorized and directed, in preparing his transcript of the said record to omit said sheets therefrom but *the* send the original sheets along with his transcript of the said record.

Ordered at chambers this the 8th day of November, 1904.

H. C. NILES,
District Judge.

The above and foregoing has the following indorsement thereon, to-wit: # 41 Equity. In circuit court of U. S. for western div. of southern dist. of Miss.—Vicksburg Water Works Co. *vs.* Mayor & Aldermen of the City of Vicksburg. Order directing clerk to omit automatic water pressure gauge sheets from record and use original sheets in lieu thereof. Filed Nov. 9, 1904. L. B. Moseley, clerk, J. H. Short, D. C. Ent. Eq. Or. Book No. 1. pp. 47 & 48.

Citation.

UNITED STATES OF AMERICA:

To the Vicksburg Water Works Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the circuit court of the United States for the western division of the southern district of Mississippi, wherein The Mayor & Aldermen of the City of Vicksburg is appellant and *your* are appellee to show cause if any there be, why the decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf

478 Witness, the Honorable H. C. Niles, district judge for the State of Mississippi, this 8th day of November, in the year of our Lord one thousand nine hundred and four.

H. C. NILES,
District Judge.

To the U. S. marshal:
To serve.

Attest
L. B. MOSELEY, Clerk.
J. H. SHORT, D. C. [SEAL.]

The above and foregoing has the following return thereon indorsed by the marshal:

"Received this writ in the city of Vicksburg, on Nov. 17th, 1904, and served the same in Vicksburg, on M. O. Crumpler, for the Vicksburg Water Works Co., by handing him a true copy.

EDGAR S. WILSON,
U. S. Marshal,
By E. C. YELLOWLEY, Deputy.

Fees. $2.00.

The above and foregoing has the following indorsement thereon, to-wit:—#41. Equity. Vicksburg, W. W. Co. *vs.* Mayor & Aldermen of the City of V'burg. Citation.—Return executed, and filed Nov. 22nd, 1904, L. B. Moseley, clerk. J. H. Short, D. C.

Order Allowing Copy of Lost Order to be Supplied and Filed.

In the Circuit Court of the United States for the Western Division of the Southern District of Mississippi.

VICKSBURG WATER WORKS CO.
vs.
MAYOR & ALDERMEN OF THE CITY OF VICKSBURG.

It appearing that on the 13th day of May, 1904, the defendant in the above entitled cause filed therein a motion for leave to file a supplemental answer, which was attached to the said motion, and for a continuance with leave to take testimony to support the allegations of the said supplemental answer, and it further appearing that the said motion was over-ruled and that a formal order to that effect was prepared by counsel for defendant and signed in open court by the presiding judge, and it further appearing that the said order has been lost or misplaced, and the paper hereto attached is
479 substantially a copy of the mis-placed order, it is ordered, that the clerk file the said paper hereto attached with the papers of this cause as of the 13th of May, 1904, and when so filed it shall be and constitute a part of the record in this cause as fully and to the same extent as the said lost of misplaced order.

So ordered, this 28th day of November, 1904.

H. C. NILES, Judge.

The above and foregoing has the following indorsement thereon, to-wit: #41. Vicksburg Water Works Co. *vs.* The Mayor & Aldermen of Vicksburg.—Order allowing copy of lost order to be filed. Filed Nov. 29, 1904. L. B. Moseley, clerk. J. H. Short, D. C.

480 Clerk's Certificate.

Certificate.

I, L. B. Moseley, clerk of the circuit court of the United States in the fifth circuit and southern district of Mississippi, do hereby certify that the above and foregoing is a full, true and correct transcript of the record, assignments of error and all the proceedings had in cause No. 41, in equity, wherein The Vicksburg Water Works Company is complainant and The Mayor & Aldermen of the City of Vicksburg, are defendants, as fully as the same remains on file and of record in my office at Vicksburg, Mississippi, in said district, except Exhibit "B" to the deposition of M. O. Crumpler filed November 20th, 1902, which is missing from the files and which I am unable to find.

Witness my official signature and the seal of said circuit court, at Vicksburg, in said district, the 30th day of November, A. D. 1904.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

L. B. MOSELEY, Clerk,
By J. H. SHORT, D. C.

Endorsed on cover: File No. 19,551. S. Mississippi C. C. U. S. Term No. 133. The Mayor and Aldermen of the City of Vicksburg-appellants, *vs.* The Vicksburg Water Works Company. Filed December 8", 1904. File No. 19,551.

FILE COPY.

Office Supreme Court U. S.
FILED
NOV 18 1905
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1905.

No. 133.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

THE VICKSBURG WATER WORKS COMPANY.

BRIEF FOR APPELLANTS

ON MOTIONS TO DISMISS OR AFFIRM AND ON THE MERITS.

J. C. BRYSON,
Counsel for Appellants.

BRYSON & DABNEY,
Of Counsel.

JUDD & DETWEILER, (INC.) PRINTERS, WASHINGTON, D. C.

(19551.)

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 133.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG

vs.

THE VICKSBURG WATER WORKS COMPANY.

Brief for the Appellants on Motions to Dismiss or Affirm on the Merits.

STATEMENT OF FACTS.

The facts from which the issues of this suit spring may be stated as follows:

(1) About 1872 the City of Vicksburg constructed a sewer along Washington street from Veto street to Main street, a distance of seven blocks, and along Main street to the Mississippi River, where it had its outlet. This sewer was constructed solely for the purpose of carrying off surface or rain water, and was so used until the construction of a system of water works in the city in 1887. (Rec., pp. 221, 222.)

(2) On March 18, 1886, the Legislature of the State amended the charter of the City of Vicksburg by enlarging its powers:

> "To provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with a party or parties who shall build and operate water works." (See Laws of Miss., 1886, p. 694.)

(3) In pursuance of this authority the Board of Mayor and Aldermen of the City of Vicksburg, on November 18, 1886, adopted an ordinance granting to Samuel R. Bullock & Company an exclusive franchise to construct and operate for thirty years water works in the City of Vicksburg, stipulating for the rental of at least ninety hydrants for the full period of the franchise at the rate of sixty-five dollars per annum per hydrant. (See Rec., pp. 15 to 20, inc.)

Section 1 of said ordinance states the grant of the franchise and is as follows:

> "That in consideration of the public benefit to be derived therefrom, the exclusive right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the City of Vicksburg, Mississippi, as they now exist or may hereafter be extended, and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for conducting and furnishing an adequate supply of good, wholesome water to the City of

Vicksburg, Mississippi, and to its inhabitants, for public and private use, and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force."

Section 3 of said ordinance states the contract for the rental of fire hydrants, and is as follows:

"In consideration of the public benefit and the protection to property resulting from the construction of the said system of Water Works, the Mayor and Aldermen of the City of Vicksburg hereby rent from the said Samuel R. Bullock & Company, their associates, successors and assigns, not less than eighty (80) double-nozzle frost-proof fire hydrants for the aforesaid period of thirty (30) years at the annual rate of sixty-five dollars ($65) for each hydrant, to be payable semi-annually on the fifteenth day of January and July. After the first year of the operation of said water works the said city hereby rents not less than ten (10) hydrants in addition to said eighty (80) for the unexpired period of said thirty years; the first one hundred (100) hydrants shall be located on the original twelve (12) miles of mains at said annual rental of sixty-five dollars ($65) payable as aforesaid, and for the remainder of said period of thirty (30) years unexpired at the time of placing each of said hydrants. The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distribution mains or on the extensions thereof as hereinafter provided at the request of the said Mayor and Aldermen of the City of Vicksburg shall be at the annual rate of fifty dollars ($50) for each hydrant, payable as aforesaid, during the unexpired period of the said original term of thirty (30) years. Water shall be used from the said hydrants for the extinguishment of fires and necessary fire practice and flushing sewers. No more than two hydrants shall be opened at one time, and no more than once in each week."

(4) In February, 1887, the Vicksburg Water Supply Company was incorporated (Rec., p. 21), and on the first day of March following, Samuel R. Bullock & Company assigned to it all rights and interest conferred by or under the said ordinance. (Rec., p. 24.)

(5) The Vicksburg Water Supply Company accepted the franchise and agreed to perform the contract set forth in the said ordinance (Rec., p. 26) and thereafter constructed the plant which was accepted by the City on March 27, 1889. (Rec., p. 291–295, inc.)

(6) On March 9, 1900, the Legislature of the State of Mississippi passed a law which, among other things, provided:

> "Be it enacted by the Legislature of the State of Mississippi, That the Mayor and Aldermen of the City of Vicksburg shall have, and they are hereby authorized and empowered to issue, negotiate and sell the bonds of the said city in any sum not to exceed three hundred and seventy-five thousand ($375,000) dollars, par value. * * *
>
> "One hundred and fifty thousand dollars, or so much thereof as may be necessary, for the purchase of the present power plant and system of water works, now owned and operated by the Vicksburg Water Works Company, if the said Mayor and Aldermen deem such purchase to be for the best interest of the said city, otherwise they are hereby authorized and empowered to use and apply the said amount, or so much thereof as may be necessary, for the construction, establishment and maintenance of a new and complete system of water works, to be owned, maintained and operated by the said city of Vicksburg.
>
> "One hundred and fifty thousand dollars, or so much thereof as may be necessary for the construction of a system of sewerage in said city, which said system, when constructed, shall be and thereafter continue the property of the said city. The said

Mayor and Aldermen are hereby authorized and empowered to adopt such plans and specifications for the construction of said water works and sewerage system as to them may seem proper, and may enter into contract for the construction or purchase of the same and make payment therefor in accordance with the provisions of this act. But said bonds so provided for the construction of a sewerage system shall not be issued nor sold until said Mayor and Aldermen shall have first provided for the purchase or establishment of a system of water works as above provided. * * *

"Before any bonds shall be issued under the authority of this act the said Mayor and Aldermen shall give twenty (20) days' notice of an election to be held in the manner provided by law for the election of municipal officers, by publication in some newspaper printed and published in said city, naming the date thereof, and the amount of bonds to be issued, and the purpose or purposes for which they are to be issued, and if a majority of the votes cast at said election be in favor of the issuance of said bonds, then the Mayor and Aldermen of said city shall be fully authorized and empowered to issue, negotiate and sell the same, as above provided." (Laws of Mississippi, 1900, p. 180.)

(7) The Board of Mayor and Aldermen ordered an election to authorize the issue of bonds under the Act of March 9, 1900 (Rec., pp. 55, 56), and on July 3, 1900, said election was held and carried for the bond issue (Rec., p. 55).

Sometime after the holding of the bond-issue election (Complainant's Bill, Sec. 18, Rec., p. 6, says: "during the election to be held on the question of bonding the city for water works"), the following resolution was passed by the City Council and served on the Water Works Company (Rec., p. 30):

> "*Resolved*, That the water works committee is instructed to notify the present owners of the Vicksburg Water Works Company, that the city of Vicksburg is authorized by law to purchase or build a water works system not to exceed in value $150,000. including all the expenses of engineering, supervision, etc., and that said committee request the owners of said water works company to say whether or not they are willing to sell their plant, machinery and system complete to the city, and if yea, to name a price at which they will be willing to sell, and name a time within which the city shall have the option to purchase the same, giving the city authorities full time to investigate by competent engineers the condition of the system as to repairs, and affording them ample opportunity to ascertain its present value, the answer to be presented in writing at an early a day as possible for the action of this body."

(8) On August 8, 1900, the plant and other property of the Vicksburg Water Supply Company were sold under foreclosure proceedings and bought in by M. O. Crumpler, who transferred his bid to the Vicksburg Water Works Company, complainant herein (Sec. 8 of the bill, Rec. p. 3, and deed from trustee, 295), and on August 15, following, this company took charge of the plant and commenced to operate same. (Sec. 19 of bill, Rec. p. 6).

(9) On November 7, 1900, the Board of Mayor and Aldermen of the City of Vicksburg passed the resolution denying liability, as follows:

> "*Resolved*, That the Mayor be, and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises." (Rec., p. 30).

A copy of this resolution was served on the Water Works Company.

(10) On November 20, M. O. Crumpler gave the city official notice that the Vicksburg Water Works Company claimed to own the water works and the Bullock contract and franchise. (Rec., pp. 29, 30).

(11) The city held a general election on December 6, 1900, preceding which a conspiracy is alleged (see bill Secs. 19 and 21, Rec., pp. 6, 7), between the city, its office-holders, office-seekers, and inhabitants.

(12) The city filed suit on December 6, 1900, in the chancery court of Warren County, Mississippi, against the Water Works Company, to cancel the ordinance or contract entered into with Bullock & Company on November 18, 1886. (Rec., pp. 7, 40, 41 to 50, inc.)

(13) Sometime after January 15, 1901, the Water Works Company presented its bill for rent of water hydrants due January 15, 1901, but payment was refused (Rec., p. 10), and the matter was referred to the water committee.

(14) About this time the Water Works Company addressed a communication to the Board of Mayor and Aldermen of the city, complaining of the action of the Board in refusing to pay full hydrant rental, and called the Board's attention to the Water Company's dependence on such payment, and the saving to the city by having the water works, and it further stated the willingness of the Water Company to stand by the contract and keep up the supply, etc. (Rec., p. 31.)

(15) The Water Committee, on February 7, 1901, reported as follows:

> "Gentlemen:—Your committee would respectfully report in reference to the above subject that they have fully considered the question of the accounts

presented by said company. On the first day of October, 1900, the Board of Mayor and Aldermen passed a resolution denying any liability to said company by virtue of the contract entered into with Samuel R. Bullock & Company, but for the use of hydrants they would pay a reasonable and just compensation. Our powers, therefore, in the premises are limited to a report based upon our idea as to what is reasonable and just. We have deemed it unnecessary that we should go into any exact estimate of what is reasonable and just, and therefore have proposed to said company that we will pay them from the 15th day of August up to the day of said resolution at the rate which had been before then paid, and since that time we will pay them at the rate of $50 per hydrant, which we consider a most liberal rate; it being understood, however, that this arrangement should not be deemed conclusive as to what is reasonable and right to pay in the future and after the termination of the pending suit; neither should these payments be deemed in any way a waiver of the rights of the city in the premises." (Rec., p. 10.)

The report was on the same day adopted by the Board, the order adopting and ratifying the same being as follows:

"That the accounts be allowed on the basis and conditions of the committee's report." (Rec., p. 10.)

(16) The Mayor addressed a letter to M. O. Crumpler, superintendent of the Water Works Company, on February 14, 1901, as follows:

"Dear Sir:—I notice in the 'Evening Post' what purports to be a statement from you to the effect that the offer of the city to pay you $50 each for the use of fire hydrants was made upon such conditions as you could not accept. It is my understanding,

and I am so advised by the city attorney, that it was not the intention of the Mayor and Aldermen to impose any conditions by which your rights in the controversy with the city should be in any way affected. I am therefore prepared to take your receipt for said payments, stipulating that your rights in the premises shall not be impaired or waived by accepting payment as aforesaid." (Rec., p. 76.)

(17) Then followed the filing of complainant's bill on February 16, 1901.

(18) The Vicksburg Water Works Company, complainant herein, sold out its interest in the water works plant and company to the City Water & Light Company on July 29, 1903. (Rec., p. 102, 103.)

(19) It was probably sometime in the early part of the year 1900 that Mr. Crumpler and his associates, who afterwards organized complainant corporation, became interested in the Vicksburg water works property, but the exact date does not appear.

Mr. Crumpler, in answer to cross-interrogatories 6 and 7, refused to state the time (Rec., p. 269), and witness McFarland states that it was sometime after the passage of the act of March 9, 1900, that Mr. Crumpler came to inspect the plant, presumably before purchasing any interest in same. (Rec., p. 324.)

The Pleadings and Proceedings.

The bill of complaint avers that complainant is subrogated to all rights, franchises and contracts acquired by Samuel R. Bullock & Company from the defendant under the ordinance passed by the City Council on November 18, 1886, and accepted by Bullock & Company; that the said ordinance is a contract valid and binding in all respects, and that it has not in any way been invalidated

by any act of complainant or any of the other holders or owners of the same; that defendant accepted the same and for fourteen years abided by its terms, but that since it has desired to own and operate a plant of its own it has caused various infractions of the same, principally the passage of an act by the Legislature authorizing the city to buy or build a plant of its own, and to issue bonds to raise money for that purpose; the holding of an election by defendant to determine whether to issue said bonds or not; the offer by defendant to buy out complainant and asking a price on its plant; a conspiracy between the city and its officers and inhabitants to injure complainant; the passage of a resolution by the City Council denying liability to pay hydrant rental under the Bullock contract; conspiracy between defendant and the candidates for city offices and the newpapers of the city to create an undue prejudice against complainant and hold it up to public disfavor, and that the said several candidates for municipal office pledged themselves if elected to bring a suit to cancel complainant's contract with the city; the filing of a suit by defendant to cancel the contract; the refusal by the city to pay hydrant rentals in accordance with the terms of the Bullock contract; the use of the Washington street sewer for sewerage purposes, and the adoption by the City Council of a report by the water committee, recommending the payment to the water company the full price named in the Bullock contract for the use of the fire hydrants up to the passage of the resolution of the council denying liability under the contract, but agreeing to pay reasonable compensation after said date which the committee estimated would be about $50 per hydrant.

The acts by the city are charged to be "unjust and unlawful actions by the city because they assume to

abrogate and take away the franchise and contract rights of complainant;" that they were adopted "in pursuance of a conspiracy and a confederacy to injure the complainant and to destroy the value of its property and to coerce the complainant to sell its works at an inadequate price; that the action of the city in offering to pay $50 per hydrant, on condition that the city's rights should not be precluded thereby, was an attempt to cause complainant to waive its rights under the Bullock contract, while those of the city would be preserved.

The bill prayed for an injunction against the city restraining it from doing any act in pursuance of the Act of March 9, 1900, or of the resolution of the Board of Mayor and Aldermen of November 7, 1900, and from doing any act tending to abrogate and take away the contract rights of complainant. (Rec. p. 11.)

Upon the prayer of the bill, the following injunction was granted:

> "We therefore strictly enjoin and command you under penalty of contempt of court, that you absolutely refrain from assuming to abrogate and take away the franchise and contract rights of complainant and from endeavoring to disable complainant from carrying on its business, and to coerce said complainant to sell its water works to the defendant for the said inadequate price, and from otherwise carrying on the unlawful conspiracy set out in the said bill of complaint; and from perpetuating any minutes, or resolutions, or ordinances of its own, whereby it denies liability or seeks to annul or refuses to pay complainant contract price for water, and that defendant be compelled to pay the Vicksburg Water Works Company for water used by it as per the ordinance price as aforesaid, and to continue to do so until this cause is heard upon its merits that the rights of all parties may be preserved, and from any other proceeding against said com-

plainant touching any of the matters in said bill contained, until this honorable court shall make another order to the contrary hereof." (Rec. p. 53.)

Complainant's amended and supplemental bill (Rec. p. 55) sets forth specifically the order of the Mayor and Aldermen directing an election to be held to determine whether the sum of three hundred and fifty thousand dollars ($350,000) in bonds should be issued for the purchase or construction of a water works system, a sewerage system, and a city hall. It is also averred therein that the said election was void and no bonds could be issued in pursuance thereof; that by the contract with Samuel R. Bullock & Company the city was precluded from issuing bonds to build a water works system of its own.

On April 30, 1901, several special pleas and demurrers were filed by the defendant, which will be found in the record, pages 57-62; but on June 21st the defendant filed its answer (Rec. p. 63) which embraced all of said special demurrers and pleas, and when the court met on July 3d, an order was made granting defendant leave to withdraw said pleas and demurrers, and to file the answer marked by the clerk, filed as of June 21, 1901. (Rec. p. 83). At the time that said answer was filed there was filed also a motion to dissolve the injunction. (Rec. p. 79).

Several motions were made by the complainant to strike the pleas and demurrers from the files and to strike the answer from the files, and finally "to require the defendant to elect on which it would stand, whether on demurrers to whole bill or answers."

The court having granted the defendant leave to withdraw the special pleas and demurrers, and to file its answer, all of said motions of the complainant were overruled. (Rec. p. 83).

Defendant's answer admits the passage by the Legislature of the Act of March 9, 1900, authorizing the city to issue bonds to enable it to buy or build water works, and for other purposes, and also the holding of an election under said act to determine whether or not the city would issue the said bonds, and the giving of notice that the city was in position to buy the water works, but it denies that either said act, or the holding of said election, or the giving of said notice, or anything else alleged to have been done under the said act impaired the obligation of complainant's contract or "assumed to abrogate and take away the franchise and contract rights to complainant."

It admits the passage of the resolution of November 7, 1900, whereby the city denied liability under any contract and authorized the city attorney to bring suit to determine the city's liability in the premises, the bringing of the suit by the city to cancel the Bullock contract, and the adoption of the Water Works Committee's report whereby the city refused to pay under the Bullock contract a past due bill to the complainant, but says that the said resolution of November 7th was not passed in pursuance of the Act of the Legislature of March 9, 1900, and that it had no relation whatever to said legislative act, and that it was not passed for the purpose of the city becoming owner of the water works.

The answer submits that the said act of the Legislature and the holding of an election under the same, and the giving of notice that the city was in position to buy the plant now in operation, and the said resolution, and the bringing of suit under same, and the denial of liability and refusal to pay hydrant rentals do not, in legal contemplation, impair the obligation of complainant's

contract; wherefore, defendant prays the same benefit and advantage as if a formal demurrer had been presented to each and all of the said allegations.

It admits the passage of the Bullock ordinance, but denies that the same was valid and binding when passed, and says that so much of the same as undertook to confer an exclusive franchise upon Bullock & Company was *ultra vires* and void absolutely.

It denies that complainant is or has been the owner of the Bullock franchise, and says that by the terms of said franchise it was not assignable or transferrable after it passed into the hands of the Vicksburg Water Supply company.

It avers the insufficiency of the allegations in the bill in reference to the Washington street sewer to constitute any basis for relief, and prays the advantage of demurrer.

The answer denies that defendant has done any act tending to abrogate and take away complainant's contract rights, or to disable it in carrying on its business, or to destroy its credit or the value of its property, or to compel it to sell its property at an inadequate price, or to cast a cloud upon its title, or to work wreck and ruin on complainant, and defendant says that if the allegations above referred to and denied are to be predicated upon the resolution of November 7, 1900, they are insufficient in law to form the basis for any relief.

The answer denies any conspiracy, but says that the complainant's allegations in that regard are insufficient in law to justify any relief, and therefore prays advantage of demurrer to the same.

The answer denies that the defendant has done any wrong to or dealt harshly with complainant in any way, but says that all its actions toward complainant have been conservative and just.

On August 1, 1901, complainant filed a formal replication to defendant's answer. (Rec., p. 91).

On December 2, 1903, the City Water Works & Light Company filed a petition asking to be substituted as a party complainant in place of the Vicksburg Water Works Company. (Rec., p. 102).

This petition recited that the petitioner had bought out complainant, and was at the time the owner of the water works and the Bullock franchise and contracts, and all other property and rights involved in this suit. Appended to this petition, as an exhibit, is a certified copy of the deed of conveyance from the complainant to the petitioner. (Rec., p. 103).

No process was issued on this petition but on May 5, 1904, complainant filed its written consent that the City Water Works & Light Company might be admitted as a party complainant. (Rec., p. 111.)

On the same day defendant filed an answer to the petition of the City Water Works & Light Company denying that the City Water Works & Light Company had acquired the property of complainant, and that the said City Water Works & Light Company had any interest in the subject-matter of the suit. (Rec., p. 111.)

On the same day the City Water Works & Light Company filed its original bill in the nature of a supplemental bill, setting up that it had, by purchase and assignment from complainant, been subrogated to all the rights involved in this suit, and was then the owner of all the franchises and property involved in the same, and that the complainant had parted with all its interest.

This bill then set out in full all the pleadings before then filed in the cause and adopted the same. (Rec., p. 112.)

On May 13 following, the City Water Works & Light Company, and the Vicksburg Water Works Company filed the following motion:

> "And now comes the City Water Works & Light Company, and the said Vicksburg Water Works Company and moves the Court for leave to withdraw from the files:
>
> 1. Its petition filed December 2, 1903:
> 2. Its original bill in the nature of a supplemental bill, filed May 5, 1904, and all exhibits to said bill and petition."

Notice to opposing counsel hereto attached.

> "And the said Vicksburg Water Works Company also moves the Court for leave to withdraw the written consent to the filing of said bill from the files." (Rec., p. 169.)

After the foregoing motion had been granted by the Court (Rec., p. 170), defendant asked leave to file a supplemental answer, setting up the facts alleged in the original bill in the nature of a supplemental bill, but denying the legality of the attempted transfer and averring that by the attempted transfer and assignment the Vicksburg Water Works Company had lost and forfeited all rights acquired under the Bullock franchise, and had by its acts become "a corporate waif and derelict," and asked for a continuance to allow defendant time to take proof to establish the averments of its supplemental answer. (Rec., p. 171.)

This motion by defendant was overruled (Rec., p. 179) and the cause went to trial.

We shall not attempt to abstract the evidence, but shall refer to it from time to time throughout the argument.

The Court rendered the following final decree:

"This day this cause came on to be heard in accordance with the motion of complainant and defendant, filed January 12, 1904, and the order of this Court on the hearing of said motion rendered the said January 12, 1904, upon the original bill, amended and supplemental bill, exhibits, answer of defendant, proof and exhibits, and the Court, after hearing and attending the evidence and arguments of counsel, and being fully advised in the premises, and being satisfied that the complainant is entitled to the relief prayed for on its original and amended and supplemental bills, and for full relief; it is thereupon hereby ordered, adjudged and decreed—

First. That the defendant, the Mayor and Aldermen of the City of Vicksburg, be and is hereby perpetually enjoined from abrogating or taking away, or from assuming to abrogate or take away, the franchises or contract rights of complainant under and by virtue of the ordinance, franchise or contract of said defendant, entitled 'An Ordinance to provide for a supply of water to the City of Vicksburg, in Warren county, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use, and giving the said City of Vicksburg an option to purchase the said works;' ordained the 18th day of November, 1866, being the ordinance, contract, and franchise marked Exhibit 'B' to the original bill of complaint, and said ordinance, contract, and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, contract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid, and enforcible

and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by by defendant thereunder.

Third. That said defendant be and is hereby directed to rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows:

'*Resolved*, That the Mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the Mayor and Alderman deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.'

And also to rescind the ordinance or resolution of said defendant adopted the 7th day of February, 1901, when the said defendant adopted the report of the committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceedings under the act of the legislature of the State of Mississippi, approved March 9, 1900, and from issuing bonds under and by virtue of said act or any other act, or ordinance, for the purpose of erecting water works of its own during the period prescribed in said ordinance, contract and franchise.

Fifth. That the said defendant refrain from constructing water works of its own until the expiration of the period prescribed in the said ordinance, contract and franchise, dated 18th of November, 1886.

Sixth. That said defendant be and is hereby required to pay all moneys due or owing, or that may

hereafter be due or owing, to said company under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and hereby is perpetually enjoined from making or adopting any resolution or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be and is hereby enjoined from permitting any further connections for the conveyance of sewerage or excremental matter, with the storm sewer or culvert located on Washington street, City of Vicksburg, and the defendant is hereby directed and commanded, within twelve months from this date, to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the Yazoo and Mississippi Rivers below the intake pipe of complainant; provided that if the defendant is unable to construct or extend said sewer or culvert and construct said outlet within twelve months from this date, it can apply to this Court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed." (Rec., p. 365.)

From this decree defendant appealed and filed the following (Rec., p. 370):

Assignment of Errors.

Appellant assigned the following as error:

I.

That the United States Circuit Court erred in allowing the City Water Works & Light Company to withdraw its petition filed in said cause on December 2, 1903,

whereby it prayed to be admitted as a party complainant, and also in allowing the said City Water Works & Light Company to withdraw its original bill in the nature of a supplemental bill, filed in said cause on the —— day of May, 1904, and the said Court erred in allowing the complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill, the order authorizing the withdrawal of said several papers being in words and figures as follows, to wit:

> "This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2, 1903, and its original bill in the nature of a supplemental bill, filed May 5, 1904, with all exhibits, and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent and the filing of said bill.
>
> "And the Court, being fully advised in the premises, doth hereby order, adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent."

II.

The Court erred in refusing to allow respondent to file its supplemental answer, setting up that the said City Water Works and Light Company was an essential party complainant, and that unless it should be made a party complainant the Court could not proceed, but must dismiss the bill.

III.

The Court erred in refusing to continue the said cause on motion of respondent after it had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill,

whereby it sought to be made a party complainant in said cause, and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

IV.

The said Court erred in granting the complainant's motion to strike from the evidence interrogatories Nos. 135, 136, 137, 138, 139, 140, 141, 142, 143 and 147, propounded to witness M. O. Crumpler, and the answers thereto, the said interrogatories and answers being as follows, to wit:

X-Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company; have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Water Works & Light Company.

X-Int. 136. It has now no property of any kind whatever?

Ans. No, sir.

X-Int. 137. What business is it now engaged in carrying on?

Ans. Nothing.

X-Int. 138. How long since it has been engaged in carrying on business or own any property?

Ans. First of December, 1903.

X-Int. 139. What eorporate act or acts, if any, has it done since the first of December, 1903?

Ans. I don't know of any except in winding up its business.

X-Int. 140. If it has no property and is carrying on no business, what further business has it to wind up?

Ans. It is winding up the accounts, etc., that belonged to the company.

X-Int. 141. It does, then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

X-Int. 145. Then, when you said it had no property you meant that it had no tangible property—you meant that it had no water works or anything of that kind?

Ans. Yes, sir.

X-Int. 143. But it does have claims, rights, choses in action, and things of that kind unwound up?

Ans. Yes, sir.

X-Int. 147. You are the manager of the new company, the City Water Works & Light Company, the same as you were the manager of the old company, the Vicksburg Water Works Company, are you not?

Ans. Yes, sir.

V.

The said Court erred in rendering the final decree against respondent, because the said decree is contrary to the law and the facts as stated in the pleadings and proof before said Court.

VI.

The said Court erred in perpetuating by its final decree the injunction against respondent, restraining it from erecting a water works plant of its own.

VII.

The Court erred in granting a mandatory injunction against respondent commanding respondent within one year to build and construct a sewer whereby the sewer now existing on Washington street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi River south of the intake pipe of complainant.

Motions to Dismiss or Affirm.

IN THE SUPREME COURT—*October Term, 1905.*

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, *Appellant,*

vs.

THE VICKSBURG WATER WORKS COMPANY, *Appellee.*

Comes now appellee by its counsel appearing in that behalf and moves the Court to dismiss the appeal in the above entitled cause for want of jurisdiction or right of appeal direct from the United States Circuit Court, where this appeal is taken from, because the only questions involved are questions that should be decided by the United States Circuit Court of Appeals, and the case should have been appealed to that Court. Therefore this appeal should be dismissed.

2. Because said final decree appealed from was entered in strict accordance with the mandate of the Supreme Court of the United States, dated the seventh of April, 1902, in the case of the Vicksburg Water Works Company *v.* The Mayor and Aldermen of the City of Vicksburg, 185 U. S., 65.

3. The case should be dismissed because the assignment of errors are not signed by appellant or its attorney.

4. The case should be dismissed because the clerk's certificate on its face shows that certain exhibit is left out, and therefore there is not a complete transcript of the record as required by the rules.

And said appellee, by counsel as aforesaid, also moves the Court to affirm said judgment or decree from which said appeal purports to have been taken, because al-

though the record may show that this Court has jurisdiction of this appeal, yet it is manifest that said appeal is frivolous and was taken for delay only.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Motion.

Argument.

On the motion set forth above, counsel for appellee have filed an elaborate brief on the merits, and, indeed, it seems that a consideration of the issues raised by the motion requires that the whole record be gone into. We therefore file with our brief on this motion our brief on the merits, the two bound together. We have done this not only because the latter had already been prepared, but for the further reason that if the former leaves out any point, reference may be had to our brief on the merits.

Brief on the Motions.

Section 5 of the Act of March 3, 1891, provides for appeals from circuit and district courts direct to the Supreme Court of the United States, "in any case that invokes the construction or application of the Constitution of the United States," and "In any case in which the constitution or law of any State is claimed to be in contravention of the Constitution of the United States."

It has been held by this Court in reference to the statute quoted above, that

> "If a claim is made in the Circuit Court, no matter by which party, that a State enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, then it is consistent with the words of the act, and, we think, in harmony with

its object, that this Court review the judgmentat the instance of the unsuccessful party, whether plaintiff or defendant.

Loeb *v.* Trustees of Columbia Township, 179 U. S., 472.

In the case of Lampassus *v.* Bell, 180 U. S., 276, it was said, with reference to this statute, that " the claim must be real and substantial." * * * "The questions which can be raised under any of the subdivisions of Section 5 of the Act must be real, the controversies they present must be substantial, not only from the nature of the principles invoked, but from the relation of the party to them by whom they are invoked."

In Carey *v.* Houston & Texas Railway Co., 150 U. S., 17, it was again said on the right of appeal under the statute just quoted, "that the construction or application of the constitution of the United States must be involved as controlling." The construction and application of the federal constitution must necessarily have been involved in the decision of the court below.

Cornell *v.* Green, 163 U. S., 75.

In case of a former appeal the questions decided on the first are not open for review on the second.

Nuestra Senora De Regla, 108 U. S., 92.

In view of the statute and of these authorities we contend that the complainant's motion to dismiss and affirm must be overruled if the record discloses any material issue, not decided on the former appeal, which involves the construction or application of the constitution of the United States or the construction of a state law, alleged by appellee and denied by appellant to be in contravention of the constitution of the United States, provided the same was by the court below decided against appellant,

We submit the following as fulfilling the above specified requirements and authorizing an appeal direct to this Court in the case at bar.

First: Did the Act of March 9, 1900 (Laws of Miss., page 180) in so far as the same authorized the defendant to issue bonds and construct water works, impair the obligation of complainant's contract and thereby contravene the constitution of the United States?

Second. Did the resolution of November 7, 1900, whereby the city denied liability to pay hydrant rentals, when construed with reference to the denials of complainant's answer and the testimony submitted on the hearing, appear to impair the obligation of complainant's contract?

Third. Does the constitution of Mississippi, in so far as the same authorizes amendments to the charter of all corporations, contravene defendant's constitutional rights, it being contended by appellant and denied by defendant, that section 178 of the constitution of Mississippi authorized the amendment of complainant's charter so as to deprive it of a monopoly and permit the city to construct water works, and that the effect of the said Act of March 9, 1900, was to amend the charter in the manner stated?

We submit that none of these questions were passed on in the first appeal, but let us examine the opinion rendered on that appeal and see just what was decided.

It was decided that a federal question appeared on the face of complainant's bill, and, we think, nothing more.

Mr. Justice Shiras, in delivering the opinion, said:

> "The sole question for our consideration is whether the bill, as originally filed and as amended, presented a federal question. * * * But our function, in the case before us on this certificate, is

> restricted to the inquiry whether, upon the allegations of the bill of complaint, assuming them to be true in point of fact, a federal question is disclosed so as to give the Circuit Court jurisdiction in a suit between citizens of the same State." 185 U. S., 65, * * * Nothing in the answer or evidence was before the Court in this appeal.

The original bill, as ground for jurisdiction, averred that the passage of the Act of March 9, 1900, impaired the obligation of complainant's contract with the city, and that the action of the City Council in ordering and holding a bond election under said act and in passing the resolution or ordinance partly in pursuance of said act, and the refusal to pay hydrant rentals, and the filing of a suit to cancel the contract, likewise impaired the obligation of complainant's contract.

The question before the court on the first appeal, and and the only one, was, do these allegations or any one or more of them, taken as true, raise a federal question?

The opinion rendered passed the first allegation without deciding whether it raised a federal question or not. We quote the opinion as follows:

> "Whether this act of the Legislature of Mississippi is in its terms subject to those objections, or whether it may be regarded as merely authorizing the city to proceed in such a manner as not to conflict with existing contract obligations, we need not determine at this stage of the case."

It, therefore, clearly appears from the language quoted that whether this act contravenes complainant's constitutional rights or not was left open for the decision of the lower court. If this act is unconstitutional in any particular, it was certainly not so decided in the opinion rendered. If, therefore, the decree of the Court below necessarily involves a holding that this act impairs the

obligation of complainant's contract, and for that reason is unconstitutional, it comes within the last ground laid in the statute for appeal to this Court direct, and it is a question decided subsequent to the mandate from the first appeal and is material and controlling.

Considering the opinion delivered on the first appeal further we find that the jurisdiction is grounded on three allegations, as follows:

> "We think that the ordinance of the city of November 7, 1900, * * and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct water works of its own, and in refusing to pay the amount due and payable under the terms of the ordinance do not present the mere case of a breach of a private contract, * * the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a federal question."

This bases jurisdiction solely on the action of the City Council, but does not refer to or undertake to construe or pass on the act of the Legislature of March 9, 1900. Moreover, it does not undertake to pass conclusively on the several acts of the City Council or to indicate in what way they or any of them, taken as true as averred, impair the obligation of complainant's contract.

Was it in the denial of liability and refusal to pay hydrant rentals under the Bullock ordinance, or was it the holding of an election to decide whether the city should issue bonds that fell under the condemnation of the Constitution?

The denial of liability and refusal to pay related solely to that part of the Bullock ordinance whereby the city agreed to rent ninety hydrants at a stipulated price, and the bond election related solely to the right of the city

to buy or build a plant of its own. Clearly the opinion does not undertake to decide whether the Bullock ordinance precludes the city from denying liability for hydrant rentals or from owning and operating a plant. It does decide that the bill raised a substantial question as to whether or not the several acts designated in the opinion as conferring jurisdiction impaired the obligation of complainant's contract, but left to the Court below to decide in what particulars they or any of them impaired complainant's contract; whether it was the hydrant provision or the right to exclude the city that was thereby invaded, and from the nature of the case it could decide no more.

However, the complainant's counsel have laid great stress on the following language in the opinion:

> "We think that * * unless the city can point to some inherent want of legal validity in the contract or to some such disregard by the water works of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States," etc.

What is here said necessarily refers solely to the three jurisdictional grounds set forth above as the same are stated in complainant's bill and limits the defence as to these three jurisdictional averments to a denial of the facts stated, or, in case the averments are true as stated and can not be denied to a showing of "inherent want of legal validity in the contract" itself or to "such disregard" of it by complainant as would work a forfeiture.

If the answer of complainant denies any material allegation referred to in the opinion as jurisdictional, the first opinion is not conclusive and the question is left open to be decided by the Court below on the pleadings

and evidence, and if there decided against appellant necessarily a question involving an application of the Constitution of the United States is raised and the appeal to this Court is warranted. Such a question is raised by the denial in the answer that the resolution of November 7th sought "to destroy or impair any contract" (Rec., p. 64) or that it was adopted in pursuance of any purpose or desire to become the owners of the water works (Rec., p. 70). Here are two denials, one applying to the Bullock ordinance as a whole and the other to that feature of it whereby the city rented from Bullock & Company ninety fire hydrants. These denials call for a judicial determination of the extent, if any, to which the resolution could impair complainant's contract. Did it impair the right to exclude the city from building a plant or the right to compel the city to pay hydrant rentals? The former opinion did not pass on these questions at all, but left them open for the decision of the lower Court. They involve a construction and application of the United States Constitution and are, therefore, ground for appeal to this Court.

So much for the questions raised by the denials of the answer. The opinion, by its terms above quoted, left open "all questions growing out of inherent want of legal validity in the contract." The former opinion did not undertake to construe the contact and to say how much of the same was valid and binding and how much was void, and, therefore, it could not decide to what extent, if any, the several averments impaired the same. The answer denied the validity of that provision of the Bullock franchise which granted to Bullock & Company the exclusive privilege of furnishing the city and its inhabitants with water and averred that the action of the city council in that regard was *ultra vires* and void. If this

provision of the contract is "wanting in legal validity" the city has a right to build and operate a plant, and complainant's contract would not be impaired by its so doing, and therefore, the holding of an election to vote an issue of bonds for that purpose could not impair the obligation of the contract.

The first opinion clearly leaves open this question to be decided by the lower court and we submit that it necessarily involves an application of the Constitution of the United States and a construction of the Act of March 9, 1900.

We have reviewed at length the several questions decided by this Court on the first appeal.

Let us now consider the final decree of the Court below in reference to the several questions left open by the opinion rendered on the first appeal and ascertain how many, and what, if any, of them involving the construction and application of the Constitution of the United States or the construction of a State law, alleged on the one side and denied on the other to be in contravention of the Constitution of the United States, have been decided against appellant.

The final decree after providing a general injunction against defendant restraining it from abrogating or taking away from complainant any of its franchises or contract rights provides further:

> "2. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforcible and binding upon said defendant and said defendant is hereby prepetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the right, privilege and benefit acquired by defendant thereunder. (Rec., p. 366.)

"3. That said defendant be and is hereby directed to rescind its resolution and ordinance adopted on the 7th day of November, 1900. * * *

"4. That the said defendant refrain from in any manner accepting the benefit of or proceeding under the Act of the Legislature of the State of Mississippi, approved March 9, 1900, and from issuing bonds under and by virtue of said Act or by any other Act or ordinance for the purpose of erecting water works of its own during the period prescribed in said ordinance, contract and franchise.

"5. That the said defendant refrain from constructing water works of its own until the expiration of the period perscribed in the said ordinance, contract and franchise dated the 18th day of November, 1886.

"6. That the said defendant be and is hereby required to pay all moneys due or owing or that may hereafter be due or owing to said complainant under and by virtue of said ordinance, contract and franchise.

"7. That the said defendant be and hereby is perpetually enjoined from making or adopting any resolution or ordinance refusing to pay the contract price of water fixed by the said ordinance, contract and franchise until the expiration of the period prescribed in said ordinance, contract and franchise."

I.

This sweeping injunction restrains the city from building water works for any purpose until the termination of the Bullock franchise, and from taking any action whatever under the law of March 9, 1900, with that end in view. This is necessarily a holding that the said Act of March 9, in so far as it authorized the city to build a water works plant, is unconstitutional as impairing the obligation of complainant's contract.

The sixth assignment of error brings the question before this Court as fully and as completely as possible.

The allegation in complainant's bill that the statute was in contravention of the Constitution of the United States (Rec., p. 8) and the denial of that by the defendant (Rec., p. 64) and the decree by the lower Court sustaining the contention of complainant, fulfill all the conditions of the statute. The question was not decided on the first appeal because the opinion, by express terms, so declares. It therefore remains to be shown that it is a material issue in the case. As to which we contend that undoubtedly the city had the right under the Bullock contract to build a water works plant as provided in the Act of March 9, 1900, for the purpose of flushing sewers, even though it should be held by this Court that the Bullock franchise and contract in its entirety was valid and binding on the city. We think it is equally true as a matter of law that the city had a right to build and operate water works to supply itself with water for such fire hydrants as it might need in addition to the ninety called for in the Bullock contract, and to supply its public buildings and institutions and its public fountains as they might be increased in numbers. There is no provision in that contract or ordinance which requires the city to take or pay for water from Bullock & Company, except the stipulation for the rental of ninety fire hydrants. In the absence of such agreement the city certainly had the right to supply itself and to build a plant for that purpose. If the city is to be denied such right under the Bullock contract, it is by implication and implication alone, which this Court has repeatedly held would not be permitted.

Stein *v.* Bienville, etc., W. W. Co., 141 U. S., 67.
Freeport W. W. Co. *v.* Freeport, 180 U. S., 587.
Hamilton Gaslight Co. *v.* Hamilton, 146 U. S., 258.

See also—

Collins *v.* Sherman, 31 Miss., 679.
Gains *v.* Coats, 51 Miss., 335.

In view of these authorities, can it be said that the city was by the Bullock contract precluded from building water works to supply itself with water for purposes other than those stated in that contract and in addition to the water there stipulated for? If not, the city had a right to build a plant for such supply.

So much for the constitutionality of the Act of March 9, considered solely with reference to the city's rights under it to construct water works independently of any "inherent want of legal validity in the contract."

Let us now consider the city's right to construct and operate a plant with reference to the "want of legal validity" in the Bullock ordinance or contract as left open by this Court in its former opinion.

Sections 3 and 4 of the final decree not only deny the city the right to build a plant independently of the stipulations in the Bullock ordinance, but necessarily hold that the exclusive feature of the Bullock franchise is valid, at least, as against the city.

We contend that the exclusive feature is absolutely void and does not preclude the city or any one else, because the statute authorizing the city to provide a water supply, being general in its terms, did not empower the City Council to grant to Bullock & Company any exclusive right and privilege. See laws of Mississippi, 1886, page 695—

> Sec .5. "That section twenty-eight (28) of said charter be, and is hereby amended, by adding thereto the following: * * * Article 30 to provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with a party, or parties, who shall build and operate water works."

The Supreme Court of Mississippi has held that such general authority will not support an exclusive grant.

In Collins *v.* Sherman, 31 Miss., 679 just referred to, it was said by Judge Handy, in delivering the opinion of the Court :

> " It is, therefore, incumbent on the party claiming the grant of an exclusive privilege under an act of incorporation, to show that it is clearly conferred by the charter, and that it was intended thereby that the State should preclude herself of the power to make grants to others which might impair the benefits accruing to the first corporation. If the exclusive right be not clearly granted, he has no reason to complain that the legislature has thought fit, in order to promote the welfare and convenience of the community, to exercise the power which it has retained, and confer powers upon other corporations which may render the enjoyment of the first grant less valuable. It was subject to that condition that he thought fit to accept the grant, and it must, of course, be held in subordination to the power over the subject matter, reserved to the public and to be exercised by the legislature. It is but one of the numerous cases in which individual interest and advantage must yield to the public good ; and the hardship and loss occasioned by the power over the subject reserved by the State, are but the result of the tacit agreement which he made with the State in accepting the grant."

Other cases in point are Gains *v.* Coats, 51 Miss., 335, also referred to above, and Greenville Water Works Company *v.* Greenville, 7 So. Rep., 409.

This court has sustained the same doctrine in many decisions which we refer to at length in our brief on the merits.

In the light of these authorities can it not be said that there was that want of " legal validity " in the Bullock contract which authorized the city to construct and operate a plant and therefore to remove the Act of March 9th, and all action taken by the city under it from the

condemnation of the Constitution of the United States? If so, sections three and four of the final decree are erroneous, since they necessarily hold the Act of March 9, 1900, to be in contravention of the Constitution of the United States, and the right of the city to build and operate a water works plant is certainly of that degree of importance to warrant an appeal direct to this Court.

Upon this question of the constitutionality of the law of March 9, 1900, we are willing to rest appellant's right of appeal to this Court, for indeed it appears to us to be beyond cavil, but since there are other questions which we consider sufficient, if not equally clear, we shall present them.

The original bill, Sec. 15 (Rec. p. 5), avers that the resolution or ordinance of November 7th and the further act of the city in refusing to pay rentals were "partly in pursuance to an Act of the legislature of Mississippi enacted on the 9th day of March, 1900."

The answer (Rec. p. 71) denies that this action of the city was done in pursuance of said Act of the legislature or even partly in pursuance of the same or that it in any way referred to the said Act.

We take it that this court sustained the jurisdiction of the lower court solely by virtue of the allegation in the bill above referred to, to the effect that the city's actions were in pursuance of the Act of the legislature, otherwise the action of the city council would have been entirely without legislative sanction and could not fall under the condemnation of Sec. 10 of Art. 1 of the Constitution of the United States providing that:—

> "No state shall * * pass any * * law impairing the obligation of contracts."

The answer further denied that the city's action in passing the resolution or ordinance complained of was

done with any "purpose or desire to become the owner of said water works" (Rec. p. 71) or that either was done "to injure the property of complainant or to coerce it to sell said works at an inadequate price" (Rec. p. 72).

These denials of the answer raised a question of fact as to the legal effect of the allegations upon which this court based the jurisdiction of the court below. As a matter of fact, was the city's action in pursuance of the Act of the legislature or not, and if not, was it done with the purpose of acquiring complainant's water works or to injure its property or to coerce it to sell at an inadequate price? To pass on these questions the court below necessarily had to pass on the constitutionality of the resolution of the city council denying liability to complainant under "any contract" and also its action in refusing to pay rentals, as to whether these acts, construed with reference to the answer and the evidence, contravened the Constitution of the United States. At the time this case was presented to this court on the first appeal the question before the court was, do these acts on the part of the city, construed solely in the light of the averments of complainant's bill, contravene the Constitution or raise a serious question as to whether they do or not? But the question before the lower court on final hearing, and now before this court, is different. Do the acts of the city, construed in the light of the denials of defendant's answer and the proofs submitted on the hearing, contravene the Constitution? To answer this question requires both the construction and application of the Constitution of the United States and the construction of the said acts of the city as to whether they contravene the Constitution or not. Either gives jurisdiction to this court and warrants an appeal direct.

The answer also denies "that the amount which is due under the ordinance was due to complainant" (Rec., p. 75) and that the complainant was the owner of the Bullock contract whereby the city agreed to rent and pay for fire hydrants (Rec., p. 71). These denials required that complainant should prove its ownership of the Bullock contract for rental of hydrants.

The evidence offered by complainant disclosed that its title to the Bullock contract was claimed through M. O. Crumpler, who purchased the same at a foreclosure sale, from the Vicksburg Water Supply Co., and assigned his bid to complainant (Rec., p. 295).

We contend that this contract was not assignable and that neither the foreclosure sale nor the assignment by Crumpler of his bid to complainant was effective to pass any interest in the Bullock contract.

Sec. 5 of the Bullock ordinance (Rec., p. 17) provides as follows:

> "That said Samuel R. Bullock & Company, their associates, successors or assigns, may procure the organization of a water works corporation under the laws of any State, and may assign to it all the rights and privileges acquired hereunder. Provided, that such assignment shall not invalidate or affect the bond required by section (7) hereof, and no assignment thereof shall be valid unless such assignee shall in writing to said board of mayor and alderman accept this ordinance and become bound by its terms and obligations."

We submit that by the terms of this contract it could only be assigned to such corporation as Bullock & Co. might organize and assign to and they having organized and assigned to the Vicksburg Water Supply Company the contract ceased to be assignable further.

This view is borne out by the charter of the Vicks-

Water Supply Company, which after conferring the usual and customary powers to sell and hypothecate its property, generally provided further in reference to this contract (Rec., p. 21):

> "This corporation shall also have power to acquire by purchase or otherwise an assignment to it of any contract which the City of Vicksburg may have heretofore entered into with any other person or persons to provide a supply of water to the City of Vicksburg and its inhabitants and of succeeding to and exercising and enjoying all and singular the rights, powers, privileges, advantages, benefits, immunities, revenues and profits, arising out of, or accruing from such contract with said person or persons; and to have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of its organization and as may now or hereafter be conferred by the laws of the State of Mississippi."

It will be observed that in regard to this particular "contract" which it was authorized to acquire there was no authority given to sell, mortgage or dispose of the same. As to that it was to be a perpetual asset in the Water Supply Company's hands which it could not pledge, hypothecate or otherwise dispose of.

It has been held repeatedly that a public service corporation can not sell and dispose of its property and franchises and thus disable itself from performing the service for which it was created except by the clearest and most explicit authority conferred by charter or statute.

> In Thomas *v.* West Jersey R. R., 101, U. S., 71, it was said, "We take the general doctrine to be in this country, though there may be exceptional cases and some authorities to the contrary, that the powers of corporations organized under legislative statutes are

such, and such only, as those statutes confer. Conceding the rule applicable to all statutes, that what is fairly implied is as much granted as what is expressed, it remains that the character of a corporation is the measure of its powers, and that the enumeration of these powers implies the exclusion of all others."

The same doctrine was reiterated by this Court in Oregon Ry. & Navigation Co *v.* Oregonian Ry. Co., 130 U. S., 1, as follows:

"Outside of the powers conferred and the privileges granted to these organizations by the statutes under which they exist, they are in all the States of the Union which, like Oregon, have the common law as the foundation of their jurisprudence, governed by that common law; and it is the established doctrine of this court, and, with some exceptions, of the States in which that common law prevails, as well as of Great Britain, from which it is derived, that such a corporation can exercise no power or authority which is not granted to it by the charter under which it exists, or by some other act of the legislature which granted that charter."

In Brunswick Gas Light Co. *v.* United States Gas, etc., Co., 83 Me., 532; 35 Am. St. Rep., 385, the reason for holding that a public service corporation can not sell or bargain away its franchise and contracts, is stated:

"One reason why these corporations are not allowed to sell or lease their corporate powers and franchises, without legislative authority, is that, if they were able to do so, they might thereby disable themselves from the performance of their public duties, and thus escape from the power of the courts and of the legislature to enforce their performance.

But a still more serious objection to the traffic in corporate franchises is the ease with which such a power could be used to create monopolies. By its

exercise, a single corporation could easily become possessed of the corporate powers and privileges of all its rivals, and thereby annihilate competition and obtain a complete control of the markets. Such combinations are usually hurtful, and sound public policy requires that they be kept under legislative supervision and restraint."

In Commonwealth *v.* Smith, Mass., 87; Amer. Dec., 672; 10 Allan, 448, it was said by the Supreme Court of Massachusetts, that—

"The franchise to be a corporation clearly can not be transferred by any corporate body of its own will. Such a franchise is not, in its own nature, transmissible. The power to mortgage can only be co-extensive with the power to alienate absolutely, because every mortgage may become an absolute conveyance by foreclosure. And although the franchise to exist as a corporation is distinguishable from the franchises to be enjoyed and used by the corporation after its creation, yet the transfer of the latter differs essentially from the mere alienation of ordinary corporate property. The right of a railroad company to continue in being depends upon the performance of its public duties. Having once established its road, if that and its franchise of managing, using, and taking tolls or fares upon the same are alienated, its whole power to perform its most important functions is at an end. A manufacturing company may sell its mill, and buy another; but a railroad company can not make a new railroad at its pleasure."

Other cases in point are—

Chicago Gas Light Co. *v.* Peoples Gas Light Co. (121 Ill., 530); 2 Am. St. Rep., 124.

Richardson *v.* Selby, 11 Allen (Mass.); 65, 87 Am. Dec., 700.

Coe *v.* Columbus, etc., Ry. Co. (10 Ohio State Dec., 372); 75 Am. Dec., 518.

Susquehana Canal Co. *v.* Bonham, 9 Watts & Sergeant, 27; 42 Am. Dec., 315.

Ragan *v.* Aiken, 9 Lee (Tenn.), 609; 42 Am. Rep., 684.

Gains *v.* Coats, 51 Miss., 335.

Bacon *et al. v.* The Miss. Ins. Co., 31 Miss., 116.

New Albany Water Works *v.* Louisville Banking Co., 122 Fed. Rep., 776.

If we are correct in our contention that this contract was not assignable, it still remains in the hands of the Vicksburg Water Supply Company, or else it died with that company. At all events the complainant, the Vicksburg Water Works Company, has no interest in it whatever, and therefore the acts of the city and of the Legislature of the State could not impair its obligation in so far as complainant is concerned, for the very simple reason that there was no obligation whatever to complainant under the said Bullock ordinance or contract.

This is exactly what defendant has contended from the start. From the very time that the Vicksburg Water Works Company took possession of the plant, on August 15, 1900, up to this hour, defendant has contested the assumed rights of complainant under the Bullock ordinance, and to that end the resolution of November 7 was passed, and the bill appearing as Exhibit "Y" (Rec., p. 40), was filed in the State Court to cancel the contract and the city resolved not to pay further under the contract.

In view of the limitations in the Bullock contract and also in the charter of the Vicksburg Water Supply Company on the right to assign, can it be said that complainant has shown that the city's action impaired the obligation of its contract? If it has not its case has failed, becuase the burden of proof rested on it to do so. On

the contrary, was not the City Council acting within legitimate bounds and merely performing its duty to the public and carrying out the trust reposed in it by the people in passing the resolution and refusing to pay? Moreover, it was not till the 19th day of November, 1900, or twelve days after the resolution of November 7, that complainant gave the defendant official notice that it even claimed to be the owner of the Bullock contract. (Rec., pp. 29, 30.) Was there not ground for the city to pass the resolution and to refuse to pay the rentals named in the contract until complainant had established its title to the contract and its right to the rentals? If so, the action of the City Council was proprietary and not legislative. The final decree necessarily construed them to be legislative and to be in contravention of complainant's constitutional rights under the Bullock contract, and being decided against complainant, they are sufficient grounds for appeal to this Court. They involve the right of complainant to collect hydrant rentals from defendant and are therefore material and important, though it does not appear that the assignment of errors predicates any specific relief upon them. But we take it that being jurisdictional in character and plain error, the Court, of its own motion, will consider them, though not specifically assigned for error.

Again, the complainant is a Mississippi corporation and subject to the provisions of the Constitution of the State of Mississippi in reference to corporations. This constitution provides as follows:

> "The Legislature shall have the power to alter, amend or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so; provided, however, that no injustice shall be done to the stockholders."

From this it appears that its charter rights and powers are subject to amendment by the State. We take it that such amendment may be made by general act of the legislature or special act, and either directly by specific amendment or by implication, that is, by an act not having reference directly to its charter, but affecting the same in that it contains provisions inconsistent with its provisions, but not of a character to do injustice to the stockholders. We submit that the Act of March 9, 1900, was of the latter class and had the effect to limit or amend the charter so as to estop complainant as a matter of law from asserting any right under the Bullock franchise inconsistent with the provisions of the said Act of March 9.

This act could not impair any right or obligation of the Bullock franchise and contract except the right to exclude the city from competition, even if such right ever existed, and this Court has held in Hamilton Gas Light & Coke Co. *v.* Hamilton, 146 U. S., 258, that a right to amend a charter included the right to so amend the same as to take away the right of an exclusive franchise. Justice Harlan said in the case:

> "A legislative grant to a corporation of special privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the grant is that the legislature may alter or revoke it, a law altering or revoking, or which has the effect to alter or revoke, the exclusive character of such privileges, can not be regarded as one impairing the obligation of the contract, whatever may be the motive of the legislature, or however harshly such legislation may operate, in the particular case, upon the corporation or parties affected by it. The corporation, by accepting the grant subject to the legislative power so reserved by the Constitution, must be held to have assented to such reservation."

It makes no difference whether it appear that the law was passed before complainant received its charter or after. If before, it took its charter subject to the provisions of the law; if after, the law simply amended the charter so as to deprive it of the power to take or hold an exclusive franchise.

Of course, if the act of March 9, 1900, had no other effect than to amend complainant's charter, as provided by the Constitution of the State of Mississippi, then this could not impair the obligation of the Bullock contract in the hands of complainant, for certainly complainant could not acquire title to more than the law which gave it being permitted it to own, and this Court could not, on the first appeal, undertake to decide whether complainant's charter was amendable, as provided in the act of March 9, 1900, or not, but the lower Court, by enjoining defendant perpetually from building water works, necessarily did, and held it not amendable, and this was sufficient ground for appeal direct.

II.

The second ground for dismissal is the alleged failure to sign the assignment of errors.

To this we reply that it is sufficiently signed. It appears (Rec., p. 372) to be signed by the solicitors for respondent.

While it does not appear that each solicitor for defendant signed individually, or that any one of them signed in his own proper name, we submit that inasmuch as the names of the solicitors appear elsewhere in the record, the signing is sufficient.

We contend, however, that the signature, either by defendant or by defendant's counsel, is not essential to the validity of the instrument. Rule 35 does not require

the assignment of errors to be signed and we submit that any paper which otherwise fulfills the requirements of the rule is sufficient. The paper in the case at bar appears on its face to be an assignment of errors which defendant will rely on in the appeal prayed.

We submit further that the question of the sufficiency of the assignment of errors is necessarily left to the discretion of the Court below. Whether or not the paper filed was an assignment of errors at all, or whether it must be signed before it could become effective to authorize an appeal, was and is left by rule 35 of this Court to the sound discretion of the lower Court, and he having accepted the paper filed, purporting to be an assignment of errors, and allowed the appeal in the case at bar on the same, it is too late to raise the question here that there is no assignment of errors in the record.

But, however that may be, it is not a jurisdictional question, and, as this Court has power over its own procedure, we submit that it is not yet too late to sign the same, *nunc pro tunc*, and to that end we have moved the Court for leaf to sign the same in our own proper names, provided this Court should be of the opinion that it is necessary and proper for the same to be signed by appellant or his counsel.

III.

As to the third ground for dismissal set forth in appellee's motion, we submit that it is insufficient to warrant a dismissal of this appeal.

It does not appear from the motion that it is material to the issues raised by the assignment of errors or that it is in any other way important. The motion is based solely on the ground that it is part of the record. We freely submit all that appellees in their briefs allege the

exhibit to show and even more. If need be we admit that it shows latteral sewers to empty into said Washington street sewer on every cross street.

The argument of counsel does not show that it is in any way material or important, nor is it alleged that appellant is in any way responsible for its loss or failure to be in the record.

If the absence of this paper from the record affords ground for a dismissal of the appeal, then it is made possible for any dishonest litigant to prevent an appeal by destroying or concealing part of the record. By this we do not suggest that opposing counsel are responsible for the loss of the exhibit in question, for indeed we are sure they are not. The fact is that the record is voluminous, comprising over one hundred separate papers, and it was necessary on many occasions for the papers to be moved from the clerk's office, and on the final hearing they were carried to the City of Jackson and afterwards returned to Vicksburg. It is surprising, indeed, that more of the papers were not lost.

However, be that as it may, the missing exhibit has been found and can now be supplied, and to that end appellant has suggested a diminution of record and moved the Court for a writ of *certiorari* to the clerk of the court below to complete the record.

Having now considered the several grounds laid in appellee's motion to dismiss and affirm, we submit that they are severally and collectively insufficient, and that the said motion ought to be overruled.

Argument on the Hearing of the Cause.

The questions for argument raised by appellant's assignment of errors may be divided, for convenience, into two groups.

First: Those growing out of the sale and conveyance by the complainant of all its interest in the subject-matter of this suit, after its commencement and before final decree, embracing the first, second, third and fourth errors assigned, and

Second: Those involving the merits of the cause and raised by the original bill and defendant's answer, embracing the fifth, sixth and seventh errors assigned.

Those groups will be taken up in their reverse order because it is desired to first present the merits of the cause.

The Merits.

Complainant's bill, stripped of redundancy and repetition, is reducible to nine averments of injury and wrong from which relief is prayed.

1. The passage of the Act of March 9, 1900, authorizing the city to issue and sell $150,000 of bonds and to buy the water works plant or construct a new plant, to be owned and operated by the city.

2. The election held under said Act to decide whether or not the city would issue the bonds as provided in same.

3. The notice served on complainant that an election had been held and carried authorizing the city to issue the bonds to buy the water works and asking whether the Water Works Company would sell, and if so, to name a price.

4. A conspiracy between the city and its inhabitants against the Water Works Company to destroy the value of its property, and abrogate and take away from it its contract rights, etc.

5. The passage of the resolution of November 7, 1900, denying liability on the part of the city to pay hydrant

rental and authorizing the city attorney to take action.

6. The bringing of a suit by the city to cancel the franchise and contract between the city and the Water Works Company.

7. The refusal by the city to pay hydrant rentals.

8. The report of the Water Works Committee recommending the payment of reasonable rental and the ratification and adoption of the same by the mayor and aldermen.

9. The discharge of sewage through the Washington street sewer into the Mississippi River above and adjacent to the water works' intake pipes, whereby the source of supply of water is alleged to be polluted.

The first of these, covered by the fifth and sixth assignments of error, raise the question of the right of defendant, city, to construct a water works plant of its own which the final decree herein perpetually enjoins it from doing.

The ninth, covered by the seventh assignment of error, involves the right of the lower Court to compel the defendant, by a mandatory injunction, to extend said Washington street sewer beyond the corporate limits, and in so doing to expend a large sum of money.

The defendant's answer, while it denies the correctness of the legal conclusions and deductions contained in complainant's bill and many of the averments of fact, in effect demurs to all of the allegations of the bill. Hence, in our argument we shall treat each allegation as if formally demurred to and argue, in addition, such issues of fact as may be presented. If the allegations of complainant's bill are insufficient in law to warrant the relief granted or if they are unsupported by the evidence this must be reversed on the merits.

Leaving out of consideration the averment of a conspiracy, which we consider frivolous and wholly unsup

ported by the evidence, the nine averments of the bill, as above stated, considered with reference to their nature and sequence, fall into three divisions, to wit:

I. The Act of March 9, 1900, and the proceedings thereunder, embracing averments numbered 1, 2 and 3 in the above classification.

II. Those actions of defendant not connected with said Act of the legislature, embracing averments numbered 5, 6, 7 and 8.

III. The Washington street sewer, averment number 9.

These will now be taken up in their order.

I.

The Act of March 9, 1900, and Proceedings of Defendant Thereunder.

The vital question in this case is the right of the defendant to operate water works during the life of the Bullock franchise. This it is perpetually restrained from doing by the decree of the court below in this cause. The basis for the injunction is the allegation and finding that defendant had precluded itself from building water works by its contract with Bullock & Co., and being thus precluded, the passage by the legislature of the Act of March 9, 1900, authorizing the defendant to issue and sell bonds for the purpose, either of buying the plant owned by complainant or of building a new one to be owned and operated by itself, was such an invasion of complainant's rights as to render the Act unconstitutional and warrant the injunction.

This Act is alleged to be unconstitutional, first, on the ground that it arbitrarily fixes an inadequate price on complainant's plant, and thereby depreciates it in value,

and second, on the ground that it impairs the obligation of complainant's contract with the city.

1. The first contention, if true, would constitute no ground for relief, because it would in no sense be a taking of complainant's property without compensation or without due process of law. However, it is not sustained by the evidence.

It is in evidence that at the time said Act was passed the plant was offered for sale to the city or any one else at a price under $150,000 (Rec. pp. 320–1) and further, that complainant bought the plant, rights and franchises, in fact, all of the property in question, for $100,000. (Rec. pp. 295–298). However, if it be conceded that the value of the property was in excess of $150,000, it could not help complainant's cause, for the reason that the Act did not in any way undertake to limit the city as to what it might pay for the plant, the only limitation being as to the amount of the bond issue. The city might add as much as it deemed proper to the proceeds derived from a sale of the bonds provided for, and furthermore the bonds might sell at a premium.

2. It is not charged that the Act, on its face, shows any inherent vice, the sole objection being that it authorizes the city to do that which complainant avers it had precluded itself from doing by its contract with Samuel R. Bullock & Co. If the city had not thus disabled itself, the object is of course bad and can not be sustained. The granting clause of the ordinance evidencing the Bullock franchise or contract, and by which it is averred that complainant is precluded, is as follows:

> "That in consideration of the public benefit to be derived therefrom, the exclusive right and privilege is hereby granted for the period of thirty (30) years, * * * unto Samuel R. Bullock & Company, *

> * * of erecting, maintaining and operating a system of waterworks, * * * within the corporate limits of the city."

We submit that this ordinance by its terms does not preclude the city. It is nothing more than a franchise granting to Bullock & Company the use of the streets and alleys for the purpose of carrying on the business of supplying the city and its inhabitants with water. Chief Justice Taney, speaking for this Court in the case of The Bank of Augusta *v.* Earle, 13 Peters, 519, defines a franchise as follows: "Franchises are special privileges conferred by government upon individuals, and which do not belong to citizens of the country, generally, of common right." From this it appears that franchises are held and exercised solely by the subjects of the sovereign or State. It follows that any limitation in a franchise, as to its use or enjoyment, refers necessarily to such only as are capable of receiving and owning the same, that is, the subjects of the sovereign, or individuals, and not the sovereign himself, or the State, which bestows or grants the same.

Applied to the case at bar, the limiting word "exclusive" applies to such, and such only, as could receive from the State the same or a like franchise to that granted to Bullock & Co., and not to the State itself, or its agent, this defendant, which, in granting the franchise in question represented the State and wielded its sovereignty in so far as authorized by charter. For the time being the defendant was the sovereign and hence the limiting word, being one that could refer only to the subject, had no reference to the defendant and could in no way exclude or preclude it from exercising the same rights and privileges granted to Bullock & Co. We do not deny that the State or this defendant could preclude

itself, for that has been held in many cases, but we assert that to do so appropriate language must have been employed, and that such does not appear in the contract before us. We admit even that the city could have excluded itself under the authority given, but we deny that the words employed, namely, "exclusive right and privilege," have that effect. We have found no authority exactly in point either against or in support of this argument, but we believe the reasoning sound and submit the same for consideration. The decision in the Lehigh Water Company's appeal, 102 Pa. St., 515, very nearly if not quite supports this view. The grant by the State to the Lehigh Company was "The right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one, and no other company shall be incorporated for that purpose." It was held that this franchise was exclusive only as respects other companies, and that the borough itself was not prohibited from supplying water from works constructed by itself, even though that might impair the value of the franchise of the water company. Here, as in the case at bar, the grant is, by its terms, exclusive; nevertheless, the Court held that the borough itself was not precluded. The words of exclusion were held to refer not to the borough but to other competition. The borough being an arm of the State, represented sufficient of its sovereignty to remove it from the general terms of exclusion employed in the grant. Following the reasoning of this case the defendant in the case at bar was not by the use of the word "exclusive" in the Bullock franchise, disabled from building a water works plant of its own.

In the case of Walla Walla Water Co. *v.* Walla Walla, 172 U. S., 1, 43 L. Ed., 341, the city excluded itself by

express and appropriate terms, and the Court held the city thereby precluded. This could have been done in the case at bar, but since it was not, the city remained free to construct water works or not as its needs might suggest.

In the case of Hellena *v.* Hellena Water Works Co., 195 U. S., 648, which contains the latest utterance of this Court on the point, it is said:

> "Had it been intended to exclude the city from the privilege of establishing its own plant, such purpose would have been expressed by apt words, as was the case in Walla Walla Co."

We submit that no such apt words are found in the Bullock ordinance.

Grants of public franchises are always construed in favor of the public. This rule was laid down by this Court in the clearest terms in the case of Stein *v.* Bienville, etc., Water Works Co., 141 U. S., 67, as follows:

> "It is a settled rule of construction that in grants by the public nothing passes by implication'; and 'if on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State.'"

And in Freeport Water Works Co. *v.* Freeport, 180 U. S., 587, this Court added:

> "That the power of a municipal corporation to grant exclusive privileges must be conferred by explicit terms. If inferred from other powers, it is not enough that the power is convenient to other powers; it must be indispensable to them."

We submit that under the rules of construction applied by this Court in the cases cited above, the city is not excluded by the Bullock franchise. We even go further and say with confidence that the terms of the Bullock franchise, if given their usual and customary meaning, do not preclude the city.

If, however, the Court should be of the opinion that the language employed ("the exclusive right and privilege") is comprehensive enough to preclude the city from competition, then we submit that the action of the Mayor and Aldermen in making such grant was *ultra vires* and void.

The board could have no power beyond that conferred by the legislature of the State, and the sole authority given by the legislature was "to provide for the erection and maintainance of a system of water works to supply said city with water, and to that end to contract with a party or parties, who shall build and operate water works." (Laws of Miss., 1886, p. 695.) It will be observed that the charter amendment quoted above empowered the city first, to provide a water supply, and second, to contract with a party or parties for the same. The two infinitive phrases enlarging the powers of the city are coordinate and indepenent, and by each a separate and distinct power is conferred on the city. Under the first it is simply empowered to "provide a system of water works." There is no limitation on the power; under it the city might have built and operated the system inself or it might have provided for a water supply in any other legal way. Under the second empowering phrase the city is authorized to contract with a party or parties to build and operate a system of water works, the power to contract being the essence of the second phrase. It may be that this was included in the power to provide water,

that the first necessarily implied the second, but that is not material. It is enough that the second does not limit the first to the power to provide a water supply solely by contract. It will be observed further, that both powers are by their terms general and not special or limited.

It was under this most general authority that the City Council undertook to grant to Bullock & Co., an exclusive franchise, and this, we submit, it was not authorized to do, and that its actions in the premises was *ultra vires* and void.

In Wright *v.* Nagle, 101 U. S., 791, this Court said:

> "The question here is, whether the legislature of Georgia conferred on the inferior Courts of its several counties the power of contracting away the right of the State to establish such ferries and bridges in a particular locality as the ever-changing wants of the public should in the progress of time require. In our opinion it did not. It gave these Courts the right to establish ferries and bridges, but to tie the hands of the public in respect to its future necessities. The right to establish one bridge and fix its rates of toll, does not imply a power to bind the State, or its instrumentalities not to establish another in case of necessity."

Again in Detroit Citizens' Street Railway *v.* Detroit Railway, 171 U. S., 48, this Court held that:

> "Easements in the public streets for a limited time have different consequences from those given in perpetuity. Those reserved from monopoly are different and have different consequences from those fixed in monopoly. Consequently, those given in perpetuity and monopoly must have for their authority explicit permission, or, if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indispensable to them."

In the case of Saginaw Gas Co. *v.* Saginaw, 28 Fed. Rep., 529, Justice Brown, now of this Court, reviewed many cases on this point and found them with practical unaminity to support the decisions above quoted.

The Supreme Court of Mississippi has followed this ruling in the case of Greenville Water Works *v.* City of Greenville, 7 So. Rep., 409, where it was held that a general authority to provide water did not authorize an exclusive grant. Judge Cooper, speaking for the Court, said:

> "There is no power given by the charter of the city of Greenville under which the municipal authorities were authorized to enter into a contract by which a monopoly for a long series of years should be given to complainant in supplying water to the manicipality and its inhabitants. The complainant does not pretend that there was any express power conferred by the charter, but seeks to infer its existence from the general powers over the subject-matter of the contract. It is not admissible to deduce implied authority of this charter from the mere general delegation of the usual power over the subject."

See also same effect Collins *v.* Sherman, 31 M., 679, and Gains *v.* Coats, 51 M., 335.

From these cases it is clear that the authority conferred on the legislature of the State did not authorize the city to grant an exclusive franchise. The city being without authority to grant such franchise to Bullock & Co., its attempt to do so was clearly *ultra vires* and the word "exclusive," as the same appear in said franchise is therefore surplusage and without effect and the franchise is the same exactly as if that word had been left out altogether.

Complainant asserts, however, that the charter amendment did empower the city to exclude itself as was done

by the City of Walla Walla (172 U. S., 1), and that therefore the exclusive feature is not void absolutely ; that while it may be void as to all other competition, as against the city, it is good. That contention is plausible and persuasive, and, if sustained, would end the argument on this branch of the case, but we submit that it is unsound in principle and unsupported by any authority. The only authority presented in the Court below to support it was the Walla Walla case, which we now contend does not even tend to support it. The grant in the Walla Walla case was not exclusive and no attempt was made to exclude any competitor except the city. Section 7 of the granting ordinance was as follows: "And until such a contract shall have been so avoided, the city of Walla Walla shall not erect, maintain or become interested in any water works except the one herein referred to, save as hereinafter specified." The only question before the Court was whether or not the City of Walla Walla had the right under a general authority to exclude itself from competition; and this Court held that it did.

Applied to the case at bar, the city, under the general authority contained in its charter amendment, might have excluded itself or any other competitor. If, therefore, it is to be held precluded by the Bullock franchise, which in terms excludes all competitors, simply because it had the power to exclude itself, the same argument would apply to each and every possible competitor, for it had the same right to exclude any other as to exclude itself, and thus all would be shut out and a monopoly created by the exclusion individually instead of collectively, of all competitors. Let us suppose that the Act of March 9, 1900, authorized the city to contract with John Smith to build a plant, instead of the authority actually

conferred to build one itself; that in pursuance of such authority the city had made such contract with John Smith, and that this suit had been brought to restrain the performance of the same. The identical argument made against the Act of March 9, 1900, could with equal force be made against the supposed Act, for the city had the same right to exclude John Smith in the first instance from competition with Bullock & Co. and their assigns that it had to exclude itself, and, as a matter of fact, did attempt to exclude him, the same as itself Thus the argument might be applied to every imaginable competitor that the city might, in the first instance, have excluded, and thus by complainant's process of reasoning we are carried around in a circle back to our starting point, and one by one every competitor is excluded and a monopoly created, just the same as if all had been excluded in a body. The vice, in exclusive franchises, condemned by the law is monopoly, and no process of reasoning can remove that evil from the Bullock franchise. By it the whole world, except Samuel R. Bullock & Co., are excluded, and it gives to them an absolute monopoly.

The question of whether or not grants like the one presented in the case at bar operate to exclude the city making them, is one that has on several occasions been before the courts of last resort, and it has invariably been held that they do not. The case of Smith *v.* Town of Westerly, 35 Atlantic Rep., 526, is exactly in point. The Court there said:

> "It will be seen at once that in attempting to grant to said company the exclusive right to lay water pipes in the public highways of said town, the town council exceeded the authority conferred by said statute, and hence that the town is not bound by said contract."

This is exactly the issue in the case at bar. The legislative authority given to the city in each case is approximately the same. In neither was there authority for an exclusive grant, and in both an exclusive grant was attempted.

The Supreme Court of Rhode Island held that the exclusive feature was void and had no bearing whatever upon the contract, and as a consequence that the town of Westerly was authorized to build a water works plant of its own and operate the same in competition with the Westerly Water Works Company.

We are aware that the United States Circuit Court in the case of Westerly Water Works *v.* Town of Westerly, 75 Fed. Rep., 181, reached a different conclusion as to the validity of this contract, but it was not on the point above suggested. The Federal Court held that the city had authority to supply itself with water or to contract with some one else to perform that service, and having contracted with another, its authority was exhausted, and hence it could not itself build a plant.

In the case of Long *v.* Duluth, 49 Minn., 280; 32 Am. St. Rep., 547, the Court found the contract to be in substance as follows:

> "That the agreement of the village is, in effect, that it will not, for the period of thirty years, either grant to any other party than this water company the privilege of supplying water and maintaining a system of water works, nor itself exercise the right of establishing water works or supplying water. We may assume that this is the proper construction of the ordinance; for if it is not, the plaintiff (appellant) has no reason for this intervention to prevent the municipal corporation from taking steps to establish and maintain a system of water works for itself; and if this is the proper construction of the ordinance, the plaintiff has no cause of action, for reasons which will presently be stated."

Upon the contract thus stated, the Supreme Court of Minnesota held:

> "The conclusion is thus reached that the charter powers of the village of Duluth did not permit it to grant an exclusive franchise, binding itself for the period of thirty years not to establish a system of water works on its own account, and that it did not become disabled to thus act in its own behalf."

The franchise in Long *v.* Duluth contains the exact provision passed on in the Walla Walla case, to the effect that the city would not construct a plant and compete with the water works company. Nevertheless, the Court held that the provision precluding the city from building a plant and competing was *ultra vires* and void, and did not bind the city. All other competition being excluded, a monopoly was attempted to be set up, which being against the policy of the law was void, and the exclusion of the city being part of the unlawful grant, failed with the rest of it. Such is the penalty laid by the law upon the doing of that which it forbids.

Under the foregoing authorities it is clear that, while a city under a general authority may exclude some competition, itself for instance, as was done in the Walla Walla case, it can not exclude all competition, as was attempted in the Westerly Water Works case, the Duluth case and in the case at bar, and further, that an attempt to exclude all competition under such general authority, is, as to the exclusive provision, *ultra vires* and absolutely void. We cite the following additional authorities:

City of Brenham *v.* Brenham Water Works, 67 Tex., 542;

Syracuse Water Co. *v.* City of Syracuse, 116 N. Y., 167.

Leaving out the word " exclusive " there is no limitation found in the grant and all competition is at once admitted and the franchise becomes the same as those passed on by the Court in the Skaneattelles and Joplin cases hereinafter cited, and in each of which it was held that the city was not precluded. Following the authority of those cases the Bullock franchise does not preclude the city from building and operating a water works plant of its own and consequently the Act of March 9, 1900, can not impair the obligation of complainant's contract in that regard for the simple reason that complainant's contract contained no such obligation.

It may be urged that while a general authority to make a grant will not support an exclusive grant that it nevertheless operates as an estoppel, and that, as applied to the case at bar, the city having attempted to grant to Bullock & Company an exclusive franchise, it is thereby estopped to set up its lack of authority to make such grant for the purpose of allowing itself to come in as a competitor, but the decisions of this and other Courts are equally clear that such contention is not maintainable.

In Sutro *v.* Pettit, 74 Cal., 332, 5 Am. St. Rep., 4422, a leading case on this point, we find the following:

> " Neither can the doctrine of estoppel, or of ratification, or of *bona fide* holding be successfully invoked by respondents. These doctrines can be invoked against municipal corporations, if at all, only in cases of informality, irregularity, etc., on the part of an authorized agent."

In the case of Dixon County *v.* Field, 111 U. S., 83, this Court decided:

> " All parties are equally bound to know the law, and a certificate reciting the actual facts, and that thereby the bonds were conformable to the law,

> when judicially speaking, they are not, will not make them so nor can it work an *estoppel* upon the county to claim the protection of the law."

This decision is quoted and approved by Justice Lamar in the case of Board of Lake Co. Commissioners *v.* Graham, 130 U. S., 674.

There is one other contention along this line that may be set up by complainant, viz: that the authority given by the legislature to the defendant was in the alternative to supply itself with water or to grant that privilege to another by contract, and having adopted the latter, the city has thereby precluded itself. This was the contention successfully set up in the United States Circuit Court in the case of Westerly Water Works *v.* Town of Westerly, 75 Fed. Rep., 181, referred to above; in Columbia Savings Bank Fund, etc., *v.* Dawson, 130 Fed., 152, and in S. West Mo. Light Co. *v.* City of Joplin, 113 Fed., 817.

But whatever weight and authority this line of decisions might have had was destroyed utterly by the decisions of this Court in the cases of Skaneattelles *v.* Skaneattelles Water Works Co., 184 U. S., 354; Joplin *v.* SW. Mo. Light Co., 191 U. S., 150, and Hellena *v.* Hellena Water Works Co., 195 U. S., 648.

In the Skaneattelles case, 184 U. S., 354, the contention, as found by the Court and set forth in the statement of facts, were as follows:

> "It is said the village at the time of plaintiff's incorporation had the election to do the work itself * * * to confer upon a private company * * * the right to do it, and when with these two different methods for obtaining a supply of water the village chose that which called for a supply by a private company, it impliedly contracted that it would not itself thereafter take the other method for obtaining such supply."

Upon this state of facts, Judge Peckham, speaking for the Court, said:

> "We can not see any solid foundation for the claim that there was a final and conclusive election of methods by the village."

In the Joplin case, 191 U. S., 150, Justice McKenna, after stating the case, said:

> "It is contended that * * * the city was given the power to construct an electrical plant * * * to 'supply private lights for the use of the inhabitants of the city,' or it could grant that right 'to any person or persons or corporation.' * * *. It chose the latter. * * * And it is hence contended that thereby the city contracted not to build works of its own."

This Court held, upon the foregoing statement of facts, that the City of Joplin, by electing to contract for lights, did not thereby preclude itself from, afterwards, under the same authority, providing lights by building and operating a plant of its own.

In these cases the question of the city's exclusion is treated as one of construction simply—that is to say, did the several cities, by contracting, under the dual authority, to build or contract for the utilities in question, thereby agree that they would not during the life of their respective contracts resort to the other branch of the authority conferred and build and operate a plant of their own to supply the utility?

Justice McKenna, in rendering the opinion in the Joplin case, said:

> "It is by implication from the statute and the ordinance passed under it, not from the explicit expression of either, that the conclusion is deduced that the city is precluded from erecting its own lighting plant, and yet it is conceded that the grant

to the appellee is not exclusive—that is, it is conceded the city has not exhausted its power under the statute by the grant held by appellee, but may make another to some other person than the appellee. In other words, that the city may make a competitor to appellee, but can not itself become such competitor. The strength of the argument urged to support the distinction is in the consideration that competition by the city would be more effective than competition by private persons or corporations—indeed, might be destructive. The city, it is further urged, could be indifferent to profits, and could tax its competitor to compensate losses. But this is speculation, and it may be opposed by speculation, and there are, besides, countervailing considerations. The limitation contended for is upon a governmental agency, and restraints upon that must not be readily implied. The appellee concedes, as we have seen, that it has no exclusive right, and yet contends for a limitation upon the city which might give it (the appellee) a practical monopoly. Others may not seek to compete with it, and if the city can not the city is left with a useless potentiality, while the appellee exercises and enjoys a practically exclusive right. There are presumptions, we repeat, against the granting of exclusive rights and against limitations upon the powers of government.

* * * * * * *

"In the case at bar restraint upon the power of the appellant city is claimed to be implied by the grant to the appellee. We think, for the reasons stated, and upon the authorities cited, such restraint can not be implied."

In the Hellena case (195 U. S., 648) the opinion defines the contract and states the law as follows:

"Properly construed, we think this ordinance shows an agreement upon the part of the company, to furnish water to the inhabitants of the city, at

not exceeding certain maximum rates, and to the city itself, upon terms to be agreed upon, made definite, as far as the city was concerned, for the term of five years. As thus interpreted, we do not find anything in this contract that prevents the city, certainly after the expiration of five years, from constructing its own plant."

The franchise or contract passed on in each of these cases is exactly the same as in the case at bar, provided the word "exclusive" be stricken from the franchise under consideration, and we have already shown that word to be without effect and the franchise to be the same as if it had been omitted. These cases, therefore, put at rest the contention that this defendant, by the Bullock franchise, bound itself not to build a water works plant of its own during the life of that franchise. This being true, the Act of March 9, 1900, could not impair the obligation of the Bullock franchise because the word exclusive, by which alone it is contended such obligation is raised, has no significance whatever, and therefore creates no such obligation.

The water company will not be heard to complain of this construction of the franchise, because it is and was presumed to know the extent of the statutory authority vested in the city, and of its impotency to make an exclusive grant, and that it could not be estopped by any excessive grant to set up its lack of authority. This proposition applies not only to Bullock & Co., to whom the grant was made, but it applies with equal force to the vendees of the said Bullock & Co. The city's authority in the premises was clearly embodied in the published laws of the State, referred to above in this brief, and inasmuch as everyone is presumed to know the law, Bullock & Co. and this complainant must have known that the city had no authority to grant an exclusive fran-

chise, and that any attempt to do so was void. It follows necessarily that the complainant will not now be heard to complain that it is or its vendor was deceived and thereby wronged in any way by the action of the city in attempting to grant an exclusive franchise.

Thus far, we submit, the cases just referred to sustain our position exactly, but there is an element in the case at bar that is not found in the others. In the case at bar there is an agreement on the part of the city to rent ninety fire hydrants for the full term of the franchise, while in the Joplin case there was no agreement for the city to take light at all from the lighting company, and in the Skaneatelles case and the Hellena case, while there was an agreement to take water from each of the said companies for five years of the franchise period, the controversy in each case arose after the expiration of such contracts, but before the expiration of the franchise. In the case at bar the statute authorizing the city to build a water works plant, and all that was done under it, took place, not only during the life of the franchise, but during the life of the contract to take water. By reason of this fact alone complainant undertakes to differentiate the case at bar from the other cases, and contends that defendant, by its agreement to take water during the full period of the franchise, thereby contracted not to build a plant until after the expiration of the franchise. This contention we now undertake to demonstrate, under the reasoning of the foregoing decisions, to be utterly untenable.

The ordinance evidencing the agreement between the defendant city and Bullock & Co. is clearly divisible into two parts: first, that relating to franchise, or the right to come upon and use the streets for the laying of pipes and supplying the city and its inhabitants with

water, and second, that part relating to the purchase of water by the city at a stipulated price, that is, the rental of ninety fire hydrants.

That part of the said ordinance referring to and granting the franchise to Bullock & Company, is set forth in section 1 of the said ordinance, and that part relating to the purchase of the water by the city from the water works company is contained in section 3 of said ordinance. While embraced in the same document, they have no bearing on one another. Under the franchise provision, the city grants to Bullock & Company and their successor, a certain license and privilege in the use of their streets, and under the hydrant rental provision, the city binds itself to rent ninety hydrants and to pay therefor $65 per annum each.

By the terms of the agreement the city is bound to pay for ninety hydrants, on the terms stated, to the end of the franchise period of thirty years, but beyond the ninety hydrants, the city is free to take or not to take water at its pleasure. The question of additional hydrants and of water for sewers and for all other purposes is left open for future agreement.

On first reading of the cases referred to we thought the Court had committed itself to complainant's view, but on a more careful consideration of the cases we now submit, that the opinions quoted above are authority for the contrary view.

The strongest statement in support of complainant's contention is found in the Skaneatelles case, as follows:

> "It would seem in the nature of things that the election of methods was for no longer a time than the law permitted a contract to be made under the method chosen by the village."

In the Hellena case, 195 U. S., 648, Justice Day, after stating the contract said :

> " As thus interpreted we do not find anything in this contract that prevents the city, certainly after the expiration of five years, from constructing its own plant."

There is no specific statement in either of these cases that the contract to purchase water evidenced an agreement on the part of the city not to build and operate a plant during the life of the agreement to so purchase water. In both cases it was decided that the agreement to take water for five years did not raise an implied contract not to build a plant during the life of the franchise, but after the expiration of the five years. In effect this is a holding that a contract for a part of the franchise period does not raise an implied contract for the whole of the franchise period.

In the case at bar, the question is exactly the same in principle. Does a contract for a part of the water needed by the city raise an implied contract to take all the water that the city may need from the contracting company? We submit that under the foregoing authorities this must be answered in the negative. If the city of Skaneatelles and the city of Hellena, by agreement to take all the water they needed for part of the franchise period, do not thereby preclude themselves from building a plant to supply themselves with water for the remaining part of such period, certainly by all sound reasoning the City of Vicksburg, by a contract to take part of the water it needs for the full contract period, is not precluded, during the life of the Bullock franchise, from building a plant to supply itself with such additional water as it may need.

An examination of the Act of March 9, 1900, will show that the main purpose of the Act was not to acquire

water works, but sewers, and that the authority given to buy water works was to prevent the great expense of purchasing water for flushing the sewers.

The owners of the Bullock franchise had no right to the sale of water for the sewers. There is no agreement in that contract that the city would take water for the use of sewers when such should be required by its growing demands. If such contract is to be thus enlarged and now fastened on the city and tie its hands for the future, and stop its progress and growth, it is by implication and implication alone.

We have tried at length to demonstrate that the Bullock ordinance does not preclude the defendant from building and operating a water works plant, as it was authorized to do by the Act of March 9, 1900. If we have succeeded, the soundness of said Act is established and the objections thereto answered, for it is self evident that the Act could not impair an obligation which did not, in fact, exist.

It does not follow, even should this Court hold the said Act to be an invasion of complainant's rights, in so far as it authorized the defendant to build water works, and to that extent unconstitutional and void, that complainant must prevail in this action.

In the first place, there has been no such action taken by the city as to warrant the injunction granted by the Court below, in the second place, under the constitution of the State of Mississippi, the complainant's charter was amendable as provided in said Act, and in the third place, the complainant is estopped in *pais* from claiming any relief from the provisions of said Act.

As to the first: The bill does not allege that the city had taken any step toward the construction of a plant, or that it had done any act evidencing an intention to build,

or that it even intended or contemplated building a water works system under the authority conferred by the Act. The sole and only allegation in this regard is the passage of the Act. The city had, under the authority of the Act, ordered and held an election to determine whether or not it would issue the bonds provided for and the majority had voted for the issue. And after this election the city served notice on the complainants of the election and its result and that the city was in position to buy the water works plant and asked for a price on the same.

The holding of the election under the said Act would have taken place just the same whether the city decided to buy the plant owned by the complainant or to build a new one. It could, therefore, be no evidence of an election of methods by the city as to whether it would build a plant or buy that owned by complainant. However, the service of notice on the complainant that the city had voted for the bond issue and was then in position to buy its plant was evidence of the city's determination in the matter. It might afterwards recede from such determination, but if so we must look elsewhere for the evidence of an intention to do so, for we assert boldly that it is not found in this record. The only evidence of an election of methods for providing water under the Act in question is in favor of a purchase of complainant's plant, and that branch of the Act is not alleged to be unconstitutional. So far as the record before us shows, not a step was taken and not a threat made by defendant under that branch of the Act which authorized it to build water works. We submit that the mere passage of the Act, without any action on the part of the city under it, did not warrant the injunction against defendant.

As to the second: The complainant corporation being organized under the Constitution and Laws of the State of Mississippi, was, therefore, subject to the provisions of same. The Constitution provides, in reference to corporations, as follows: (Sec. 178.)

> "Corporations shall be formed under general laws only. The legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so; provided, however, that no injustice shall be done to the stockholders."

The only effect of the Act of March 9, 1900, that is complained of in the bill was the power that it gave the city to acquire and operate a waterworks plant of its own; that is to say, it destroyed the exclusive feature of the franchise granted to Bullock & Company. If this franchise had been granted after the adoption of the Constitution of 1890, it would have been subject to amendment in the same manner and effect as provided in the Act complained of, and this being the case, we submit that complainant, being chartered and organized under the said Constitution, can not enforce any franchise acquired by purchase which the State itself could not at the time grant.

The complainant corporation is the creature of the State; it takes its life and being from the State, and all its powers are the gift of the State. Under the constitutional provisions quoted above, the State has the right to amend its charter in any manner it saw fit, provided no injustice was thereby done to the stockholders.

The act complained of had been passed and was in force at the time complainant received its charter from the State, and it took its charter, subject to the provis-

ions of the Act, and no rights or powers could pass to or be held by the corporation inconsistent with the provisions of the Act.

If correct in this, the complainant company is limited to a showing that the Act works an injustice to its stockholders; but this contention has been by this Court decided against complainant in the case of Hamilton Gas Light & Coke Co. *v.* City of Hamilton, 146 U. S., 253, in which case Justice Harlan said:

> "A legislative grant to a corporation of special privileges, if not forbidden by the Constitution, may be a contract; but where one of the conditions of the contract is that the legislature may alter or revoke it, a law altering or revoking, or which has the effect to alter or revoke the exclusive character of such privileges, can not be regarded as one imparing the obligation of the contract, whatever may be the motive of the legislature, or however harshly such legislation may operate, in the particular case, upon the corporation or parties affected by it. The corporation by accepting the grant subject to the legislative power so reserved by the Constitution, must be held to have assented to such reservation."

Greenwood *v.* Union Freight R. R. Co. 105 U. S., 13.

Oshkosh Water Works *v.* City of Oshkosh, 187 U. S. 437.

Knoxville Water Co. *v.* Mayor & Aldermen of the City of Knoxville, 189 U. S., 434.

As to the third: Complainant is estopped by the action of its assignor, the Vicksburg Water Supply Co., from predicating any relief on the said act, because said Water Supply Co. was as much responsible for the passage of said Act as the defendant.

The evidence shows beyond cavil that C. R. McFarland, the superintendent of the said Water Supply Co., and the agent and representative of the stockholders of

the same, was actively engaged in procuring the passage of the Act complained of. Upon this point McFarland testifies. (Rec., pp. 313, 314, and 315.)

Int. 21. State how long you had charge of the said water works at Vicksburg, Mississippi, as manager and superintendent of same.

Ans. From October 1, 1889, to August 15, 1900.

Int. 36. State if you were in charge of said water works system in the City of Vicksburg, Mississippi, on the 9th day of March, 1900, at the time the legislature of Mississippi passed a law authorizing the Mayor and Aldermen of the City of Vicksburg to issue bonds in the sum of $150,000 to buy or build a water works plant, which said act appears on pages 180, 181, 182, 183 and 184, of the sheet acts of the legislature of the State of Mississippi, for the year 1900, and if you state that you were, state whether or not you had any knowledge of the the said Act before the same was introduced before the legislature of the State of Mississippi?

Ans. I was in charge of the water works plant on the 9th day of March, 1900; I believe I had knowledge of this.

Int. 37. State whether or not you conferred with one or more members of the legislature with regard to said bill and urged its passage with the open and avowed purpose of selling the water works system to the said Mayor and Al lermen of the City of Vicksburg?

Ans. I did urge its passage with the intention of selling the water works plant to the City of Vicksburg.

Int. 38. State, if you know, whether or not at the time from the time said bill was introduced in the legislature up to and including the time when it became a law of the State and for some considerable time thereafter that the Vicksburg Water Supply Company was offering its

entire water works system in the said City of Vicksburg for sale at a sum considerably under one hundred and fifty thousand dollars?

Ans. I do know that to be a fact.

Int. 41. State if at any time from the passage of said act up to the 8th day of August, 1900, you had authority from the holder or owner of said bonds and a controlling interest in said stock, to sell the same to the Mayor and Aldermen of the City of Vicksburg, or any one else, at a price equal to or below the said sum of one hundred and fifty thousand dollars, and if you state that you did, name the person or corporation from whom you obtained such authority and the price at which you were authorized to sell said stock and bonds, or the said system of water works, giving particulars.

Ans. I did have authority to sell at a price less than $150,000. I obtained my authority from the First National Bank of New York City.

After the passage of the Act an election was called by the City Board and held on July 3, 1900, at which it was voted to issue the bonds to purchase or construct a plant.

Some time after this, just on what date does not appear in the record, the city gave notice to the Water Company that it had voted the bonds necessary to buy its plant and asked if the Company was willing to sell, and if so, to name a price. (Rec., p. 30.)

Up to this time all that had been done had not the approval and active co-operation of the water company. At the time the Act complained of was passed, and up to the time that the plant changed hands and passed into the hands of complainant, there was no friction between the city and the water works management. It is in evidence that so long as McFarland operated the

works there was no complaint; in fact, complainant's bill alleges that during about fourteen years of the contract there was no complaint (Rec., p. 4, Sec. 11, of ordinance), and accepting this as true, the contract being signed and dated on November 18, 1886, the first complaint would fall about November 18, 1900. It is therefore clear that the act complained of was passed some months before any complaint was made and that the same was not passed in a spirit of hostility.

We submit that upon the foregoing state of facts the complainant is estopped to complain of the said Act or anything done up to this time, in pursuance of the same. It will not be heard to complain of an Act of legislature passed for its benefit and which its superintendent openly and actively aided in procuring, as shown by the testimony.

The fact that complainant did not then own the plant puts it in no better position. It can take no higher right nor occupy any better position than its vendor, the Vicksburg Water Supply Company, which was attempting to sell to the city when complainant stepped in and made the purchase which defendant was preparing to make.

The case is covered by the decision in the case of Dickson *v.* Calgrove, 100 U. S., 578, where the law of estoppel is clearly stated as follows:

> "The law upon this subject is well settled. The vital principle is, that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both."

We submit that under this authority upon the undisputed facts as stated by the witness McFarland and de-

nied by no one, complainant is estopped to predicate any relief upon this Act.

II.

Resolution of the City Council Denying Liability.

Under this head will be considered not only the resolution of the City Council denying liability to pay for hydrant rental, but also the bringing of the suit by the city to cancel the Bullock franchise and contract, the refusal by the city to pay hydrant rental and the report of the water committee to the Board of Mayor and Aldermen, recommending that the city refuse to pay the contract price per hydrant, but that it pay a reasonable price therefor, which the committee submitted to be $50 per hydrant, and the adoption by the board of said report.

These several acts by the city are alleged in complainant's bill to be an attempt to abrogate and take away from complainant its franchise and contract rights and to impair the obligation of its contract with the city, and to have been done partly in pursuance of the Act of the Legislature passed March 9, 1900. (Rec., p. 5.) It is sought by these averments to bring the said acts under the condemnation of the constitutional provision in reference to the impairment of contracts. We shall endeavor to show that the said several acts were not done, even *partly* in pursuance of the Act of the Legislature, and that they are, furthermore, proprietary and not legislative in their nature.

The acts do not, on their face, purport to be in pursuance of the said Act of the Legislature, While the bill filed by the city sets forth the provisions of the legislative Act, we take it that no one would claim that the

averments of the bill could, in legal contemplation, be deemed and considered as legislative action. This constitutional blanket was stretched to its limit when it was made to cover the deliberative action of a city council taken under legislative authority. All the acts by the city set forth above relate to and hinge on the resolution passed by the City Council on November 7, 1900, as follows:

> "*Resolved*, That the mayor be, and he is, hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises."

There is nothing in the wording of this resolution to connect it in any way with the Act of March 9, 1900. The Act and the resolution of the board of November 7, relate to entirely different subject-matter. The first involves the right of the city to build and operate a plant and the latter the question of the liability to pay hydrant rental under an alleged contract. If the legislative Act impaired the obligation of the contract, it was the franchise feature of the same, viz.: the right of the complainant to exclude competition; but if the resolution of the City Council impaired the obligation of the contract, it was that part of the same which obligated the city to pay the complainant rent for hydrants. We take it that unless the passage of this resolution can in some way be shown to have been in pursuance of the Act of March 9, 1900, it can not be held to violate the obligation of the contract entered into with Bullock & Company.

The constitutional inhibition is against the legislative branch of the government and not against the administrative. In the case of New Orleans Water Works Company *v.* New Orleans Sugar Refining Co., 125 U. S., 18, it is said:

> "In order to come within the provision of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired but it must have been impaired by a law of the State. The prohibition is aimed at the legislative power of the State, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals."

The legislative Act authorizing the city to buy or build water works was passed, and the action taken by the city under it was completed before complainant owned the water works plant or the Bullock franchise and at a time when a state of harmony existed, while McFarland was superintendent, and while the plant was owned by the Vicksburg Water Supply Company, but the resolution complained of was passed after McFarland had ceased to be superintendent, and after the plant had passed out of the hands of the Vicksburg Water Supply Company, and into the hands of the complainant, the Vicksburg Water Works Company, and after Superintendent Crumpler had assumed the management of the plant. The passing of the said resolution marked the end of the state of harmony which had existed, according to complainant's bill, for about fourteen years, and likewise the beginning of a state of discord and contention.

The city, by its answer, has denied that the resolution was in pursuance of the legislative act, and the city

fathers have denied that they so intended at its passage, and the complainant has offered nothing to warrant such view.

On its face, the resolution is a simple denial of the obligation to pay hydrant rentals, and an authority to bring suit to test the liability but in the meantime offering to pay a reasonable rental for hydrants.

The subsequent action of the city in actually filing suit and in refusing to pay the complainant's next water bill when the same was presented, all support the view that the resolution was nothing more than what it purported to be on its face, a simple denial of liability under a contract, which, at the time, the city denied that complainant had any right to enforce, even if such contract was enforcible, and that fact the city also denied.

Unless the building of a new plant was the moving incentive which led to the passage of the resolution of November 7, 1900, it can not be said that it was passed in pursuance of the Act of March 9, 1900, for that Act, in so far as it related to water works at all, related to the acquisition of a plant, and had no reference whatever to contesting the city's liability under the Bullock contract.

In deciding this case, when it was before this Court, on the question of jurisdiction (See 185 U. S., 65) Justice Shiras said:

> "Whether this Act of the legislature of Mississippi is, in its terms, subject to those objections, or whether it may be regarded as merely authorizing the city to proceed in such a manner as not to conflict with existing contract obligations, we need not determine at this stage of the case, because we think that the ordinance of the city of November 7, 1900, whereby the Mayor was instructed to notify the water works company that the Mayor and Aldermen deny any liability upon any contract for the use of the water works hydrants, and the subsequent action

> of the city in holding an election to authorize the issue of bonds to buy or construct water works of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, do not present the mere case of a breach of private contract to be remedied by an action at law, but disclose an intention and attempt, by subsequent legislation of the city, to deprive the complainant of its rights under an existing contract; and that, therefore, unless the city can point to some inherent want of legal validity in the contract, or to some such disregard by the water works company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a Federal question."

As we understand this opinion, it is that the allegations of complainant's bill sufficiently connect the resolution of the Board denying liability with the Act of the legislature authorizing the city to construct water works to raise a Federal question and thereby give jurisdiction. Of course for the purpose of considering jurisdiction, defendant's answer could not be considered. The only question therefore before the Court was whether complainant's bill sufficiently alleged that the resolution of the City Council of November 7th was in pursuance of the authority conferred on the city by the said Act, and the Court held that it was. We take it that the opinion above quoted in no way precludes the reopening of that question, to be considered anew upon the allegations of the bill, the denials of the answer, and the proofs submitted on the hearing. However, the language of the opinion apparently limits the city "to point to some inherent want of legal validity in the contract, or to some

such disregard by the water works company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract."

If the city is to be thus limited, it can never raise the validity of any contract except at the peril of an injunction from the Federal Courts. Surely it was not the intention of this Court to sanction any such doctrine.

We submit that the city at all times and under all circumstances had the right to question the validity of the contract for hydrant rental, provided it was not done in pursuance of legislative authority directing or authorizing the same. How else could the city ever raise the question of its liability to the Water Works Company except by a denial of such liability, and an appeal to the Courts to decide the question? It can not be denied that the city, independently of any act of the legislature, had authority to bring a suit to cancel the contract without incurring liability to an action for the impairment of same. In legal contemplation and effect the resolution did no more. The filing of a suit to cancel the contract was the most emphatic denial of liability. What added effect could there be in embodying in the resolution authorizing suit a denial of liability? If liability was not denied, there could be no reason for bringing a suit to cancel. The denial of liability was nothing more than the justification or reason given by the Board for directing the City Attorney to "take such action as shall be necessary to determine the rights of the city in the premises."

The fact that the Mayor was required to notify complainant of the action of the Board can not change or in any way affect the nature of the action taken. The legal effect of the resolution is the same, whether notice of it was given to complainant or not.

Let us here notice that the decision of the Court is based not alone on the resolution of the Board of November 7, 1900, but as well upon "the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct water works of its own and in refusing to pay the amount due and payable under the terms of the ordinance." An examination of the record will show that the Court was in error in stating the sequence of the grounds upon which its conclusion is based. The election referred to by which the city was authorized to issue the bonds, in point of fact took place not after, but before the resolution of the Board denying liability, and before the complainant had bought the plant, and before it had commenced to operate the same, the election being held on July 3, 1900. (Rec., p. 55.) The resolution was not passed until November 7, following, four months after the bond election.

There was an election held by the city on December 6, 1900, and referred to in complainant's bill in reference to the charge of conspiracy (Rec., p. 6), but that was a general election for municipal officers and must not be confused with the bond election held five months earlier.

Clearly, the action of the board in holding the election to determine whether or not defendant would issue bonds to buy or build water works had reference to the Act of the legislature of March 9, 1900, and was done in pursuance of the same, and if this had followed the action of the board in denying liability instead of preceding it and had itself been followed by the further action of the board in refusing to pay hydrant rentals, as stated by Justice Shiras in the opinion quoted above, it would have been, at least, persuasive, that all three acts of the board were in pursuance of the same general purpose and authority. The Court having gathered from the

variously commingled allegations of the bill that the bond election was sandwiched between the different resolutions of the board in regard to denial of liability for hydrant rentals and the refusal to pay the same it was but natural to conclude that at least a real, earnest and *bona fide* contention was presented in complainant's bill as to whether or not the action of the board in denying liability was not under and in pursuance of the Act of the legislature of March 9, 1900, and therefore presented a Federal question as to whether or not the obligation of the Bullock contract had been impaired, and if it had, whether complainant was entitled to the relief sought in this action.

We assert with confidence that upon careful examination of the record in this case nothing can be found to warrant the conclusion that the action of the City Council in denying liability to pay hydrant rentals, and in refusing to pay the same, and in bringing suit to cancel the Bullock contract was in pursuance of the legislative authority conferred by the Act of March 9, 1900. We contend further that the said action of the City Council, as detailed above, was purely administrative and proprietary in character and not in any sense legislative, and for that reason could not be held to impair the obligation of any contract.

There is yet another ground for contending that the action of the city in passing the resolution of November 7, 1900, denying liability to pay hydrant rental was legislative, to wit: Sec. 5 of the Bullock ordinance provided that Bullock & Company might "procure the organization of a water works corporation under the laws of any State and may assign to it all the rights and privileges acquired hereunder" and the charter of the Vicksburg Water Supply Company, a corporation organized by

Bullock & Co. to which Bullock & Co. assigned their franchise and contract rights provided that "this corporation shall also have the power to acquire by purchase or otherwise an assignment to it of any contract that the City of Vicksburg may have heretofore entered into with any other person or persons to provide a supply of water to the City of Vicksburg and its inhabitants and of succeeding to and exercising and enjoying all and singular the rights, powers, privileges, advantages, immunities, revenues and profits arising out of or accruing from such contract which said city by ordinance or otherwise may have conferred and granted to said person or persons."

From these it will be seen that the contract between Bullock & Co., and the City of Vicksburg contemplated one assignment by Bullock & Co., to a corporation to be organized by them, and we contend that by stipulating and naming one assignment of this contract all others were thereby precluded, otherwise there could have been no reason whatever for providing both in the contract and in the charter that this particular contract might be assigned by Bullock & Co., to such corporation as Bullock & Co. might organize. If it had been intended that the contract should be assignable, generally, to any person not only by Bullock & Co., but his assignees then there could have been no reason whatever for authorizing an assignment to such company as Bullock and his associates might organize.

Collins *v.* Sherman, 31 Miss., 679.
Gains *v.* Coats, 51 Miss., 335.

We submit that this branch of the case at bar is exactly the same in principle and is controlled by the case of St. Paul Gas Light Co. *v.* City of St. Paul, 181 U. S., 142. The City of St. Paul was under contract with the

St. Paul Gas Light Company to pay interest on the cost of constructing certain gas street lamp posts. The city had ceased to use some of these posts and thereafter denied its liability to pay interest on the cost of constructing such of the posts as it had ceased to use. That part of the resolution denying liability was as follows:

> "That from and after the passage of this resolution no interest be paid by the City of St. Paul to the said St. Paul Gaslight Company on account of the cost of the purchase and equipment of said gas street lamp posts."

It was held that the foregoing resolution did not impair the obligation of the gas company's contract.

In rendering the opinion of this Court, Justice White said:

> "The other provision in question created no new right or imposed no new duty substantially antagonistic to the obligations of the contract, but simply expressed the purpose of the city not in the future to pay the interest on the cost of construction of the lamp posts which were ordered to be removed. That is to say, it was but a denial by the city of its obligation to pay and a notice of its purpose to challenge in the future the existence of the duty to make such payment. This denial, while embodied in an ordinance, was no more efficacious than if it had been expressed in any other form, such as by way of answer filed on behalf of the city in a suit brought by the company against the city to enforce what it conceived to be its right under the contract. When the substantial scope of this provision of the ordinance is thus clearly understood, it is seen that the contention here advanced of impairment of the obligations of the contract arising from this provision of the ordinance reduces itself at once to the proposition that wherever it is asserted on the one hand that a municipality is bound by a contract to

perform a particular act and the municipality denies that it is liable under the contract to do so, thereby an impairment of the obligations of the contract arises in violation of the Constitution of the United States. But this amounts only to the contention that every case involving a controversy concerning a municipal contract is one of Federal cognizance, determinable ultimately in this Court. Thus, to reduce the proposition to its ultimate conception is to demonstrate its error."

The only difference between the St. Paul resolution and the resolution in the case at bar is that in the case at bar the resolution authorized the City Attorney to take action to protect the city's rights, and directed the Mayor to serve notice of the resolution on the Water Works Company, and neither, we submit, changed the legal significance of the resolution or removed it from the authority of the St. Paul case. We do not contend that the St. Paul case is authority for holding that the city is not liable to pay hydrant rentals. It does not touch that point in the case. All we contend is that under the St. Paul case the resolution complained of does not, and did not at the time, warrant the granting of the injunction perpetuated in the final decree of the Court below.

It may be held that the record in the case at bar fails to show any "inherent want of legal validity in the contract," so far as it pertains to the payment of hydrant rentals. We submit that even admitting the city's liability to pay for these, the injunction was unwarranted, because the resolution and the several other acts done in pursuance of the same were not, in legal contemplation, an impairment of complainant's contract, and without this there is no authority for the injunction. The most that can be said of them is that they gave complainant a right of action against defendant, and on this point the case is equally under the precedent of the St. Paul case quoted above.

III.

Washington Street Sewer.

The ninth ground of complaint stated in complainant's bill, that the city had permitted offal and excrement from water closets to be emptied into the said sewer and discharged through it into the Mississippi River at a point above the intake pipe of the complainant, is not sustained by the evidence. Only one instance is specifically stated in all the evidence taken where the city ever gave authority for the use of said sewer for said purpose. (Rec., p. 309; ans. to int. 16; p. 355, ans. to int. 23; p. 343, ans. to int. 23).

This sewer, when first constructed, emptied into the Mississippi River, afterwards into Lake Centennial, at the foot of First East street. (Rec., p. 221.) The lake at that time had its outlet through West Pass, about four miles from the sewer outlet, into the Mississippi River at a point about a mile above where the water works intake pipe was afterwards located. (Ans. to int. 31, Rec., pp. 322, 323.) In the spring of 1903 the course of the Yazoo River was, by the United States Government, diverted, and the said river, by means of an artificial canal, was made to flow into and through Lake Centennial and to empty into the Mississippi River at a point about half a mile above the water works. (See testimony of Brennan, Rec., p. 242; Streuby, Rec., p. 245, and Butts, Rec., p. 246.) By means of the diversion of the river the sewage was caused to flow into it and thence into the Mississippi River at a point much nearer than before. In addition to this, its velocity was greatly accelerated by the change from the dead water of the lake to the swift current of a living stream. It is not

alleged in complainant's bill, and there is no evidence tending to show that the defendant had anything whatever to do with the change in the Yazoo River whereby the sewage was carried in front of the water works. Without this change the sewage had to pass through Lake Centennial four miles to West Pass, and then one mile down the Mississippi River before it reached the water works. (Testimony of McFarland, ans. to int. 31, Rec., pp. 322, 323.) The lake being without current, there was time for it to settle and purify itself before it emptied into the Mississippi at all, and it then had a mile of current to commingle and diffuse it with the vast volume of that mighty stream, so that by the time it reached the water works it was devoid of contamination.

It is not alleged in the bill, nor does any witness testify, that there was the remotest danger of contamination by this sewer up to the time of the diversion of the Yazoo River, which diversion took place after the filing of this suit, the suit having been filed on February 16, 1901, while the diversion did not take place until February, 1903. (Rec., p. 273, Ans. to X-Int. 43; see also communication of complainant to city council, R., p. 219–20.) Nor is it alleged, nor has any witness testified, that the city has authorized any connections with the said sewer since the diversion of the Yazoo River. Upon this state of facts the Court below rendered the following remarkable decree:

> "That the said defendant be and he is hereby enjoined from permitting any further connections for the conveyance of sewage or excremental matter, with the storm sewer or culvert located on Washington street, City of Vicksburg, and the defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor, so as to

> discharge said sewrage and excremental matter into the Yazoo or Mississippi River below the intake pipe of complainant; provided, that if the defendant is unable to construct or extend said sewer or culvert and construct said outlet within twelve months from this date, it can apply to this Court for good cause shown for an extension of time beyond the said period of twelve months."

We take it that no argument is necessary to demonstrate the unsoundness of this decree. In the first place, it is not supported by facts, and in the second place, it is a transgression by the Court of the authority reposed in a co-ordinate branch of the Government. It was held by this Court at an early date that the judiciary could not in any manner interfere with the legislative or executive departments of the government to restrain either from action or to compel action by either where any discretion is vested in either of the co-ordinates.

In the case of Mississippi *v.* Johnson, 71 U. S., 475, the Court said:

> "The Congress is the Legislative Department of the Government; the President is the Executive Department. Neither can be restrained in its action by the Judicial Department; though the acts of both, when performed, are, in proper cases, subject to its cognizance.
>
> The impropriety of such interference will be clearly seen upon consideration of its possible consequences.
>
> Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to observe that the Court is without power to enforce its process. If, on the other hand, the President complies with the order of the Court and refuses to execute the Acts of Congress, is it not clear that a collision may occur between the Executive and Legislative Departments of the Govern-

ment? May not the House of Representatives impeach the President for such refusal? And in that case, could this Court interfere in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this Court to arrest proceedings in that Court?"

The same doctrine is laid down in Cooley's Constitutional Limitations, Fifth Ed., p. 254, as follows:

> "As no State does or can undertake to protect its people against incidental injuries resulting from its adopting or failing to adopt any proposed legislative action, so no similar injury resulting from municipal legislative action or nonaction can be made the basis of a legal claim against a municipal corporation. The justice or propriety of its opening or discontinuing a street, of its paving or refusing to pave a thoroughfare or alley, of its erecting a desired public building, of its adopting one plan for a public building or work rather than another, or of the exercise of any other discretionary authority committed to it as a part of the governmental machinery of the State, is not suffered to be brought in question in an action at law, and submitted to the determination of court and jury. If, therefore, a city temporarily suspends useful legislation; or orders and constructs public works, from which incidental injury results to individuals; or adopts unsuitable or insufficient plans for public bridges, buildings, sewers, or other public works, or in any other manner, through the exercise or failure to exercise its political authority, causes incidental injury to individuals, an action will not lie for such injury."

In view of these authorities, the decree above referred to is clearly erroneous. It compels legislation on the part of the city by requiring it to construct a sewer some

two or three miles in length, extending beyond the corporate limits about three quarters of a mile, and into or through the corporate limits of another municipality, to wit: the village of Speed's Addition. (Rec. p. 272).

On page 272 of the Record appear questions to and answers by Mr. Crumpler, superintendent of the water works company, as follows:

X-Int. 37. How far is your intake pipe below and south of the southern limits of the City of Vicksburg?

A. I think something like three-fourths of a mile.

X-Int. 38. And is it not due west or opposite the village of Speed's Addition?

A. I am under the impression that we are now in the city of Speed's Addition. I don't know exactly where the limits are.

It does not appear from the Record that the city had authority to acquire a right of way beyond its corporate limits, and as the city could possess no authority, except by the legislative act of the State, and since there was no act giving authority (and the court will take judicial knowledge of the acts of the legislature), it may here be said that the city had no authority to acquire or condemn a right of way beyond its corporate limits.

The decree, therefore, required the city to legislate upon a subject upon which it was wholly incapacitated to legislate, and any action it might take in pursuance of said decree, toward constructing a sewer beyond its limits, would be *ultra vires* and void.

The question of the feasibility of constructing the sewer commanded by the decree is purely governmental, and involves legislative discretion.

For aught that appears in this Record, the said sewer is impossible of construction. The route may be through rock, or it may be along an ascending plain, or if along

a declining plain, it may lack sufficient fall to free itself. Moreover, it does not appear that the city has funds to comply with the decree, and, if not, it compels the exercise of the taxing power, which undoubtedly is legislative.

The decree is clearly in violation of the fundamental principles of this Government, whereby the co-ordinate branches of the Government are each made sovereign in in its own department. It is quite one thing for a court to declare the acts of a legislative body void because in violation of some constitutional provision or some fundamental right, and quite another for a court to undertake, through the extraordinary remedy of a mandatory injunction, to compel a legislative body to act in matters involving legislative discretion.

If the city did any wrong to the Water Works Company, or transgressed any of its rights in permitting sewage matter to be emptied into said Washington street sewer, the limit of the relief possible to complainant in this suit would be to declare the action of the city in giving such permit void, and restrain it from giving a like permit in the future.

Sale of Interest by Complainant Pendente Lite and Issues Raised Thereby.

Having considered the issues pertaining to the merits of this cause, we come now to consider the issues growing out of the sale by complainant of the subject-matter involved, during the progress of the suit.

This suit was filed in February, 1901, and on the 29th day of July, 1903, complainant sold the water works, franchise and contracts belonging to it and forming the subject-matter of the cause to the City Water Works & Light Company (Rec., pp. 103–112,–171–270 and 271),

and on December 1st following, the said purchaser went into possession of the plant and commenced to supply the City of Vicksburg with water (Rec., 271, 272). The final decree herein was rendered on May 18, 1904. Upon this point, Mr. Crumpler, witness for complainant and Superintendent of the Water Works Company testified (Rec., pp. 271, 272):

X-Int. 17. Has that Company continued since August 15, 1900, to own and operate a water works system in this city?

Ans. Yes, sir; up to a few months ago when a transfer was made to the City Water Works & Light Company.

X-Int. 18. The City Water Works and Light Company then, is a corporation and now owns and is now operating the water works plant and system in this city?

Ans. It is.

X-Int. 19. Is the City Water Works & Light Company a corporation organized under the laws of the State of Mississippi, or under the laws of some other State, and if under the laws of some other State, what State?

Ans. It is under the laws of South Dakota.

X-Int. 20: What connection, if any, has the Vicksburg Water Works Company now with the property and management of the water works system now engaged in supplying water to the defendant and inhabitants of the City of Vicksburg?

Ans: None.

X-Int. 21: It has parted with all of its interest then in the plant that is now being used to supply water to the City of Vicksburg and its inhabitants?

Ans: Yes sir:

X-Int. 22: It is not now the owner of the franchise or of the contract originally made with S. R. Bullock &

Company to supply water to the City of Vicksburg and its inhabitants?

Ans: It is not.

At the time of taking Crumpler's deposition the petition of the City Water Works & Light Company, praying to be admitted as party complainant in place of the Vicksburg Water Works Company, was on file with the papers in the cause (Rec. pp. 102–105 inc.), but no process had been issued on the same, nor had any order been made by the Court in reference to the same.

On May 5th, 1904, defendant filed an answer to said petition, denying that said City Water Works & Light Company was then the owner of the plant, franchise and contracts, as set up in its said petition. (Rec. p. 117).

On the same day the said City Water Works & Light Company filed in this cause a paper denominated, "An Original Bill in the nature of a Supplemental Bill" (Rec. p. 112), and with it complainant filed its written consent to the substitution of said Water Works & Light Company in place of itself as complainant. (Rec. p. 110).

It does not appear that defendant filed an answer to this bill. However, on May 11th, there was filed a paper purporting to be a motion by the City Water Works & Light Company for leave to withdraw its petition, praying to be admitted as party complainant, and its original bill in the nature of a supplemental bill, and by the complainant for leave to withdraw its consent to the substitution of the City Water Works & Light Company as party complainant in place of itself, same being as follows: (Rec. p. 169.)

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI—*Western Division.*

VICKSBURG WATER WORKS COMPANY

v.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG.

"And now comes the City Water & Light Company and the said City Water & Light Company, and the said move the Court for leave to withdraw from the files:

"1st. Its petition filed December 2, 1903.

"2d. Its original bill in the nature of a supplemental bill filed May 5, 1904, and all exhibits to said bill and petition.

"And the said Vicksburg Water Works Company also moves the Court for leave to withdraw its written consent to the filing of said bill from the files.

"HUDSON & FOX AND
"SMITH, HIRSH & LANDAU,
"*Sols. for Vicksburg Water Works Co. and*
"*City Water & Light Co.*"

On May 13, 1905, the Court granted this motion by order set forth in complainant's first assignment of error (Rec., p. 170).

On May 13th defendant moved the Court for leave to file a supplemental answer setting forth the attempted sale by complainant to the City Water Works & Light Company, and that complainant had thereby incapacitated itself to proceed with the cause and had become a corporate waif and derelict and denying that the City Water Works & Light Company had acquired the property rights of complainant under the so-called sale and transfer, or that it had been subrogated to the rights

of complainant in this cause and praying for a continuance to allow time for the proof of the facts alleged (Rec., p. 171). This motion was overruled by the Court in the following order (Rec., p. 179):

> "This day came on to be heard defendant't motion, this day filed, for leave to file the supplemental answer attached to the said motion and for a continuance with leave to take testimony in support of the allegations of the said supplemental answer, and the Court having heard the arguments of counsel, and being advised in the premises, it is considered that the said motion be and is hereby overruled.
>
> So ordered this 13th day of May, 1904.
>
> H. C. NILES, *Judge.*

On the same day complainant moved the Court to suppress the questions and answers propounded to and made by M. O. Crumpler and set forth in the fourth assignment of error, and on May 18 this motion was granted and the evidence suppressed. (Rec., 179.)

The first error assigned involves the right to have a pending suit decapitated by allowing the only party complainant with any interest in the subject-matter of the suit to withdraw. From that time forward the suit progressed without a living complainant. The Vicksburg Water Works Company had not only sold its plant and franchise, but to all intents and purposes it had passed out of existence, being kept alive only for the purpose of collecting a few accounts, as shown by the testimony set forth in the fourth assignment of error.

In passing on the right of a sole complainant to proceed with a suit after parting with all interest in the same, Circuit Judge Woods, in the case of Ross *v.* City of Fort Wayne, 63 Fed. Rep., 466, said:

> "Walker having parted with all interest * * * * could not prosecute the suit further, and abatement

was inevitable unless a new plaintiff could be substituted."

To the same effect is the opinion of Judge Hammond in the case of Hazleton-Tripod Boiler Co. *v.* Citizen's Street Railway Company, 72 Fed. Rep., 327, as follows:

> "Owing to familiar principles of equity, somewhat different in proceedings at law, a decree will not be made in favor of a plaintiff who has no interest in the subject-matter of the decree. Therefore, if the plaintiff, by any alienation, so absolutely divests himself of all interest as to leave nothing for him to take, the suit becomes not abated as it might be at law, but defective; and, until the party having the proper right is in some way brought before the Court, the case can not proceed after the fact of alienation has been, in proper form, brought to the attention of the Court."

To the same effect we find the text in Bates' Federal Equity Procedure, Vol. 2, Sec. 642, page 682, as follows:

> "It is firmly asserted that a suit in equity must be prosecuted by and in the name of the party in interest. When the sole plaintiff, suing in his own right, is deprived of his whole interest in the matters in controversy by an event subsequent to the institution of the suit, as where the plaintiff has assigned his whole interest to another, the plaintiff is no longer able to prosecute the suit for want of interest; and as the assignor claims by a title which may be litigated, the benefit of the proceeding in the cause by the assignor can be obtained by the assignee only by an original bill in the nature of a supplemental bill."

In view of these authorities, we submit that it was clearly error to allow the withdrawal of the petition and original bill in the nature of a supplemental bill.

This error would have been cured had the court allowed defendant to file its supplemental answer, which was, in fact, an original bill in the nature of a supple-

mental answer, though not so designed by the pleader. Upon this refusal is predicated defendant's second assignment of error. This involves exactly the same proposition of law as the first assignment argued above, and the same authorities apply, but in addition it raises the right of a defendant to set up the defect in the suit produced by the complainant parting with all interest and thereby incapacitating itself to proceed with the cause.

That the defendant had such right is made clear by the very nature of the transaction. The sale or assignment was made by one corporation to another, both creatures of the State, endowed with such rights and powers only as the law conferred on them. It did not follow as a matter of law that the instrument of conveyance executed by complainant and delivered to the City Water Works & Light Company, and attached to defendant's supplemental answer as an exhibit, was sufficient to vest all interest in the subject-matter of the suit in the said City Water Works & Light Company, and if it did not, the defendant had a right to take advantage of such defect, and this it could not do unless permitted to file a supplemental answer setting up such facts or a bill in the nature of a supplemental answer setting up the same.

Equity Rule No. 57, we take it, covers the case:

> "Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason, a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the Court on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the

> defendant shall demur, plead or answer thereto on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the Court."

While this rule does not in terms provide who shall have the right to file a supplemental bill or an original bill in the nature of a supplemental bill, we take it that either the party purchasing or the defendant may file the same. In other words, any one having an interest in the suit may file the same.

In Pue *v.* Pue, 4 Md., Ch. 386, it was held that the defendant could file such bill.

In the case of Hazleton-Tripod Boiler Co. *v.* Citizen's Street Railway Company, referred to above, Judge Hammond used this language:

> "If the defendant in this case should, by proper petition, or by supplemental proceeding, appropriate to the purpose, bring to the Court a knowledge of the fact of this alleged transfer of the property involved, and of the assignment by the plaintiff of its interest in the boiler contract, the Court would direct the cause to stand over until, by proper proceedings, the party in interest should appear and demand a decree."

While this may be no more than an expression of opinion on the effect of the rule above quoted, it certainly shows that Judge Hammond considered that a defendant had the right to set up the fact of sale of interest, and to take whatever advantage might flow to the defendant by reason of such sale.

We submit that it was error to overrule defendant's motion for leave to file its supplemental answer.

If the defendant had the right to file its supplemental answer it had the right to time within which to take testimony to substantiate the same, and hence had a right to a continuance for that purpose.

The fourth assignment of error involves the suppression of testimony to the effect that the complainant had parted with all interest in the water works plant and the Bullock franchise and contracts, and had surrendered possession of the plant, and was not at the time fulfilling the Bullock contract by supplying the city with water, but that complainant had surrendered that duty to the City Water Works & Light Company.

This testimony was admissible under any just construction of the issues regardless of whether the Court permitted the withdrawal of the petition or the original bill in the nature of a supplemental bill of the City Water Works & Light Company or not, or whether the Court permitted the filing of defendant's supplemental answer.

The testimony went to the very heart of complainant's right to a decree, and showed that the complainant was not entitled to a decree because it had no interest in the subject-matter of the suit.

It furthermore showed that the complainant was not fulfilling the Bullock contract by supplying the city with water; that it had been derelict in that duty for more than six months—from December 3d to May 18th following.

Certainly this testimony was admissible to show that complainant was not entitled to the mandatory injunction which perpetuated the final decree compelling defendant to pay hydrant rental to complainant, when, as a matter of fact, the water was being furnished by another company.

The defendant is enjoined for refusing to pay complainant's hydrant rentals under the Bullock franchise and contract, and this testimony showed conclusively that complainant has no interest in the Bullock contract,

and, as a matter of fact, was not furnishing water under it to the defendant city, and yet it was excluded by the Court, and the mandatory injunction requiring defendant to continue paying the complainant for services it was not rendering was made perpetual.

We submit that no Appellate Court can overlook such clear error.

Respectfully submitted,

J. C. BRYSON,
Counsel for Appellant.

BRYSON & DABNEY,
Of Counsel.

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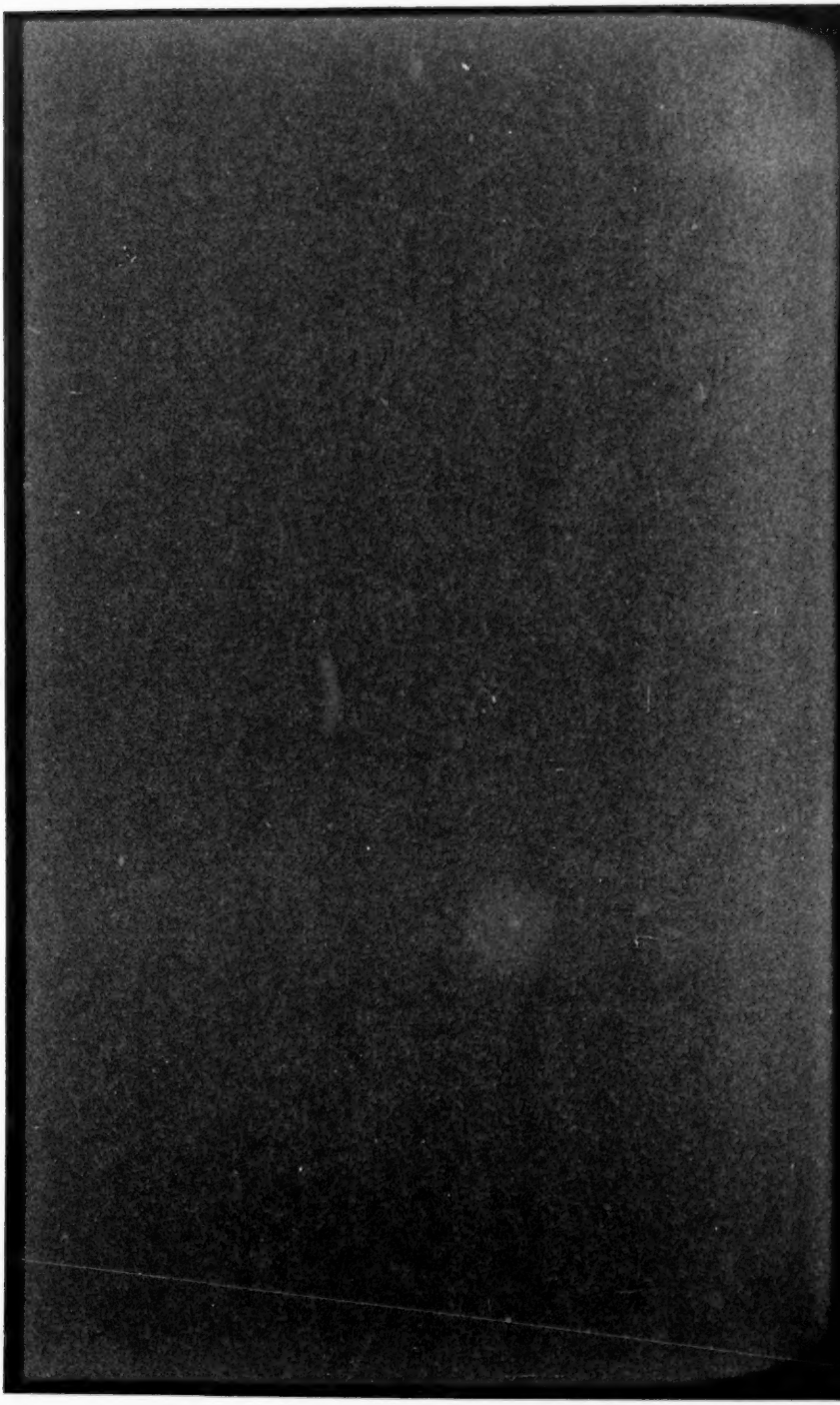
SUPREME COURT OF THE UNITED STATES.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 133.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

THE VICKSBURG WATER WORKS COMPANY, APPELLEE.

BRIEF OF APPELLANT ON MOTION TO DISMISS AND AFFIRM.

MOTION TO DISMISS AND AFFIRM.

In the Supreme Court. October Term, 1905.

Mayor and Aldermen of the City of Vicksburg, Appellant.

vs.

The Vicksburg Water Works Company, Appellee.

Comes now Appellee by its counsel appearing in that behalf and moves the court to dismiss the appeal in the above entitled cause for want of jurisdiction or right of appeal direct from the United States Circuit Court where this appeal is taken from, because the only questions involved are questions that should be decided by the United States Circuit Court of Appeals, and the case should have been

appealed to that court. Therefore this appeal should be dismissed.

2nd. Because said final decree appealed from was entered in strict accordance with the mandate of the Supreme Court of the United States dated the 7th of April, 1902, in the case of The Vicksburg Water Works Company vs. The Mayor and Aldermen of the City of Vicksburg, 185, U. S. 65.

3rd. The case should be dismissed because the assignment of errors, are not signed by appellant or its attorney.

4th. The case should be dismissed because the clerk's certificate on its face shows that a certain exhibit is left out and therefore there is not a complete transcript of the record as required by the rules.

And said appellee by counsel as aforesaid also moves the court to affirm said judgment or decree from which said appeal purports to have been taken because although the record may show that this court has jurisdiction of this appeal yet it is manifest that said appeal is frivolous and was taken for delay only.

HUDSON & FOX,
SMITH, HIRSH & LANDAU,
Attorneys for Motion.

I. STATEMENT OF THE CASE.

During the year 1870 the City of Vicksburg constructed a sewer along Washington Street from Veto Street to Main Street and along Main Street to the Mississippi River, where it had its outlet. This sewer was constructed solely for the purpose of carrying off surface or rain water and was so used until the construction of the present system of water works in the City of Vicksburg in 1887. (R. p. 222.)

On March 18th, 1886 the Legislature of the State of Mississippi amended the charter of the City of Vicksburg so as to authorize it to provide for the erection and maintenance

of a system of water works. The exact language of the amendment is as follows:

"To provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with a party or parties who shall build and operate water works."

Laws of Mississippi 1886, page 694.

In pursuance of this amendment the Board of Mayor and Aldermen of the City of Vicksburg on November 18th, 1886, adopted an ordinance granting to Samuel R. Bullock & Company, their associates, successors and assigns, the right and privilege to construct and operate a water works system in the City of Vicksburg for the period of thirty years from the date of said ordinance. The ordinance is set out in full in the record at pages 15-20. The parts of said ordinance which are involved in this controversy are as follows:

"SECTION 1. That in consideration of the public benefit to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty years from the time that this ordinance takes effect, unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance, and of using the streets, alleys, public squares and all other public places within the corporate limits of the city of Vicksburg, Mississippi, as they now exist or may hereafter be extended, and within such other territory as may now or hereafter be in its jurisdiction, for the purpose of laying pipes, mains and other conduits, of erecting hydrants and other apparatus for the conducting and furnishing an adequate supply of good and wholesome water to the city of Vicksburg, Mississippi, and to its inhabitants for public and private use."

* * * * R. p. 15.

"SECTION 2. Source of Supply. * * * The water shall be taken from such point as shall be free from all sewerage contamination." R. p. 17.

"SECTION 3. In consideration of the public benefit and the protection of property resulting from the construction

" of the said system of water works the Mayor and Alder-
" men of the city of Vicksburg hereby rent of the said
" Samuel R. Bullock & Company, their associates, success-
" ors and assigns, not less than eighty double-nozzle, frost-
" proof fire hydrants for the aforesaid period of thirty years
" at the annual rental of $65.00 for each hydrant, to be pay-
" able semi-annually on the 15th days of January and July.
" After the first year of the operation of said water works
" the said city hereby rents not less than ten hydrants in
" addition to the said eighty, for the unexpired period of
" said thirty years; the first hundred shall be located on the
" original twelve miles of mains at said annual rental of
" $65.00, payable as aforesaid, and for the remainder of
" said period of thirty years unexpired at the time of plac-
" ing each of said hydrants." * * * * R. p. 17.

"SECTION 5. The said Samuel R. Bullock & Company,
" their associates, successors and assigns, may procure the
" organization of a water works corporation under the laws
" of any state, and may assign all the rights and privileges
" assigned to them hereunder. Provided that such assign-
" ment shall not invalidate or affect the bond required by
" Section 7 hereof, and no assignment thereof shall be valid
" unless such assignee shall in writing to said Board of
" Mayor and Aldermen accept this ordinance and become
" bound by its terms and obligations." R. P. 17.

"SECTION 13. The said Samuel R. Bullock & Company,
" their associates, successors and assigns, shall have the
" right to make all needful rules and regulations governing
" the consumption of water, the tapping of pipes and general
" operation of water works, and to make such rates and
" charges for the use of said water as they may determine,
" provided that such rates and charges shall not exceed 50
" cents for each thousand gallons of water. R. P. 20.

Pursuant to the authority contained in Section 5 of the aforesaid ordinance the said Samuel R. Bullock & Company did on Feb. 1st, 1887, procure the organization of a water works company under the general statutory laws of the State of Mississippi, known as the Vicksburg Water Supply Company, (R. p.p. 21-24) and on the 1st day of March, 1887 they, in pursuance of the authority contained in said Section 5 aforesaid, assigned, transferred, and set over to the Vicksburg Water Supply Company and its successors and assigns, all of their right, title and interest in and to the ordinance

of Nov. 18th, 1886, aforesaid, thereby substituting the said Vicksburg Water Supply Company in the place and stead of the said Samuel R. Bullock & Company. On the same day the Vicksburg Water Supply Company in writing duly notified the Mayor and Aldermen of the City of Vicksburg of its acceptance of said ordinance and agreed to be bound by its terms and obligations. R. p. 26.

Upon its purchase from Samuel R. Bullock & Company as aforesaid, the Vicksburg Water Supply Company executed a mortgage to the Farmers Loan & Trust Company of New York City, as trustee, to secure the payment of an issue of $250,000.00 of its first mortgage 6 per cent. thirty year gold bonds, presumably for the purpose of raising money with which to construct the water works. R. p.p. 32-40. By said deed of trust the Vicksburg Water Supply Company conveyed to the Farmers Loan and Trust Company as trustee as aforesaid, and its successors forever, all of its real and personal property, goods, chattles, lands, rents, water works buildings, pump houses, stand-pipes, hydrants, apparatus and equipments, situated in the City of Vicksburg, County of Warren and State of Mississippi, etc., etc., but did not, by express terms, convey its rights and privileges under the ordinance of Nov. 18th, 1886. R. p.p. 33-34.

The Vicksburg Water Supply Company thereupon proceeded to construct and did construct a water works substantially in conformity with the ordinance of Nov. 18th, 1886, and the same was on March 27th, 1887, by a resolution of the Board of Mayor and Aldermen of the City of Vicksburg, duly approved and accepted. R. p. 291.

After the water works were completed in March 1887, the Vicksburg Water Supply Company begun the operation of the system and continued to operate it up to about the 15th of August, 1900, a period of about thirteen years; during which time the company furnished water to the City of Vicksburg and its inhabitants, but whether the supply was adequate and wholesome, and whether it otherwise complied with the provisions of said ordinance are questions which this court is called upon to decide. During all this time the

City of Vicksburg paid the agreed hydrant rental of $65.00 per annum as provided for in said ordinance.

The water works was not a financial success, and in the summer and fall of 1899 or in the early part of 1900 negotiations were opened between the First National Bank of New York City, the owner of the bonds, through Chester R. McFarland, the then superintendent of the water works company in Vicksburg, with the Mayor and Aldermen of the City of Vicksburg, looking to a sale by the company of said water works to the City of Vicksburg, and the plant was offered to the city at a sum considerably under $150,000.00, though the exact figure is not given by the evidence. See depositions of W. L. Trobridge, R. p. 305; Chester R. McFarland, R. p. 311; J. J. Hayes, R. p. 330; D. A. Campbell, R. p. 336.

The city, desiring to put itself in a position to purchase the property, with the knowledge and consent of the said Chester R. McFarland, applied to the Legislature of the State of Mississippi for authority to issue bonds to raise the money to make the purchase, and on March 9th, 1900, the Legislature of Mississippi enacted a law authorizing the City of Vicksburg to buy or build a water works and sewerage system of its own, and to issue bonds for that purpose. The material parts of the act are as follows:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi:* That the Mayor and Aldermen of the City of Vicksburg shall have and they are hereby authorized and empowered to issue, negotiate and sell the bonds of said city in any sum not to exceed $375,000.00. * *

"SECTION 2. The proceeds derived from the sale of said bonds shall be applied as follows: $150,000.00, or so much thereof as may be necessary for the purchase of the present power plant and system of water works now owned and operated by the Vicksburg Water Works Company, if the said Mayor and Aldermen deem such purchase to be for the best interest of the said city. Otherwise, they are hereby authorized and empowered to use and apply the said amount, or so much thereof as may be necessary for the construction, establishment and maintenance of a new and complete system of water works

" to be owned, maintained and operated by said City of " Vicksburg. $150,000.00, or so much thereof as may be " necessary for the construction of a system of sewerage in " said city, which said system when constructed shall be " and thereafter continue the property of said city. The " said Board of Mayor and Aldermen are hereby authorized " and empowered to adopt such plans and specifications for " the construction of said water works and sewerage system " as to them may seem proper, and may enter into a con- " tract for the construction or purchase of the same, and " may make payment therefor in accordance with the pro- " visions of this act. But said bonds so provided for the " construction of a sewerage system shall not be issued nor " sold until said Mayor and Aldermen shall have first pro- " vided for the purchase or establishment of a system of " water works as are here provided. * * * *

" Before any bonds shall be issued under the authority of " this act the said Mayor and Alderman shall give twenty (20) " days notice of an election to be held in the manner pro- " vided by law for the election of municipal officers, by " publication in some newspaper printed and published in " said city naming the date thereof, and the amount of " bonds to be issued, and the purpose or purposes for which " they are to be issued, and if a majority of the votes cast " at said election be cast in favor of the issuance of said " bonds, then the Mayor and Aldermen of said city shall be " fully authorized and empowered to issue, negotiate and " sell the same as above provided." Laws Miss. 1900, p. 180.

The Board of Mayor and Aldermen, in pursuance of said act, ordered an election to authorize the issuance of the bonds, and on July 3rd, 1900, an election was held and resulted in favor of the issuance of the bonds. R . p.p. 55–56.

About the time this election was held M. O. Crumpler purchased the bonds issued by the Vicksburg Water Supply Company and held by the First National Bank of New York City, and procured the advertisement and sale of the property mentioned and described in the deed of trust to the Farmers Loan & Trust Company above mentioned, and at the sale which took place on the 8th day of August, 1900, bid in the property described in said deed of trust (R. p.p. 295–300), but subsequently and before the deed was made to him, assigned his bid to the Vicksburg Water Works Company,

the complainant in this case, and the deed was accordingly made to the Vicksburg Water Works Company. (R. p. 297, par. 3.) When this company was chartered and organized, and for what purpose, and what its powers were, the Record fails to disclose.

On the 18th day of October, 1900, the Vicksburg Water Supply Company, by Whitney Conant, its president, conveyed by quit-claim deed, all the property mentioned and described in the deed of trust to the Farmers Loan & Trust Company to the Vicksburg Water Works Company, presumably for the purpose of perfecting the title of the Vicksburg Water Works Company to all the property, real and personal, theretofore owned by the Vicksburg Water Supply Company. In this conveyance special reference is made to the contract with the city, embraced in the ordinance of Nov. 18th, 1886, and an effort was made to convey that also. The Vicksburg Water Works Company thereupon on Nov. 20th, 1900, notified the Board of Mayor and Aldermen of the City of Vicksburg in writing in accordance with Section 5 of said ordinance, that they had purchased the property and plant of the Vicksburg Water Supply Company, including the contract of Nov. 18th, 1886, and agreed to become bound by its terms and obligations; but the Board of Mayor and Aldermen refused to recognize or approve the sale to them upon the ground that the Vicksburg Water Supply Company had no right or power to sell and from that time to the present have consistently and persistently refused to recognize the Vicksburg Water Works Company as the owner of the contract of Nov. 18th, 1886, and refused to treat with them as such.

On August 15th, 1900, the Vicksburg Water Works Company took possession of the plant and begun operating the same, supplying the City of Vicksburg with water for its fire hydrants and also supplying the individual consumers of water, for which it fixed the rates. (R. p. 270 and 304.)

Shortly after the bonds had been voted by the tax payers of the City of Vicksburg the Mayor and Aldermen, in pursuance of their negotiations with the First National Bank of

New York City, had through Chester R. McFarland, passed the following resolution:

"*Resolved*, that the water works committee is instructed " to notify the present owners of the Vicksburg water " works that the City of Vicksburg is authorized by law to " purchase or build a water works system, not to exceed in " value $150,000.00, including all the expenses of engineer- " ing, supervision, etc., etc., and that said committee re- " quests the owners of said water works to say whether or " not they are willing to sell their plant, machinery and " system complete to the city, and if yea name a price at " which they would be willing to sell, and naming a time " within which the city shall have an option to purchase " the same, giving the city authorities full time to investi- " gate by competent engineers the condition of the system " as to repairs and affording them ample opportunity to " ascertain its present value, the answer to be presented in " writing at as early a day as possible for the action of this " body."

A copy of this resolution was submitted to the owners of the water works company, but they declined to sell and made a counter proposition looking to the building by themselves of the sewerage system mentioned in the act of March 9th, 1900, and the sale of the water works system and the sewerage system to be so constructed by them, for the $300,000.00 of bonds authorized to be issued under that act, which was not acceptable to the Board of Mayor and Aldermen, and no sale was consummated.

On Nov. 7th, 1900, the Board of Mayor and Aldermen of the City of Vicksburg passed the following resolution, to-wit:

"*Resolved*, that the Mayor be and he is hereby instructed " to notify the Vicksburg Water Works Company that the " Mayor and Aldermen deny any liability for the use of the " water hydrants; that from and after August, 1900, they " will pay a reasonable compensation for the use of said " hydrants; that the city attorney take such action as shall " be necessary to determine the rights of the city in the " premises." R. p. 30.

A copy of this resolution was served upon the Water Works Company, and a committee appointed to determine what the fire hydrants were reasonably worth per annum, which committee subsequently reported that $50.00 per annum would be fair and reasonable for the use of said hydrants, which report was adopted by the board.

On Dec. 6th, 1900, the Board of Mayor and Aldermen of the City of Vicksburg, through their attorney, brought a suit against the Vicksburg Water Works Company in the Chancery Court of Warren County, Mississippi, to test the validity of the ordinance of Nov. 18th, 1886, and their liability thereunder to the Vicksburg Water Works Company, on various grounds (R. p.p. 40-51) which will be found repeated in the answer filed to the bill in this case on Jan. 21st, 1901, (R. p.p. 63-78,) and need not be stated here.

From the time the water works were constructed in 1887, up to the time of the filing of the bill in this case, a number of persons along Washington Street connected their stores and other premises with the storm sewer on Washington Street, and caused the sewerage and other excremental matter from their premises to flow into this storm sewer and thence into the Mississipi River about two miles above the intake pipe of the complainant. A great many of these connections were made while the Vicksburg Water Supply Company was the owner of the plant, and the evidence shows conclusively that they were made with its consent and connivance. Some few were made with the permission of the Board of Mayor and Aldermen. Many others were made without their knowledge or consent.

By its original bill, filed herein Feb. 16th, 1901, (R. p.p. 1-51) and its amended and supplemental bill, filed April 23d, following (R. p.p. 55-57) the complainant set out the foregoing facts, among others, and claimed; that the ordinance of Nov. 18th, 1886, was in full force and effect, notwithstanding the denial thereof by the Board of Mayor and Aldermen of the City of Vicksburg; that the complainant was the owner of the contract, evidenced by the sale made August 1st, 1900, under the deed of trust to the Farmers

Loan & Trust Company and the quit-claim deed of the Vicksburg Water Supply Company, made August 15th, 1900, and the owner of all the rights and privileges granted to Samuel R. Bullock & Company by said ordinance; that complainant had complied faithfully with all the terms and conditions of said contract, including the obligation to furnish an adequate supply of good and wholesome water and to keep the pressure high enough to protect against fire, etc., etc.; that it was entitled to collect and receive the hydrant rentals at the contract price of $65.00 per annum from August 1st, 1900, to the filing of the bill, and so long as the contract was in force and it was the owner thereof; that the appellant, in procuring the passage of the act of the Legislature of Mississippi of March 9th, 1900, providing for the issuing of bonds to buy or build a water works, in the holding of the election thereunder, and the denial of liability for the hydrant rental, was preparing to build a water works system of its own and to operate the same in competition with complainant; that this purpose, if carried out, would have the effect to impair complainant's contract of Nov. 18th, 1886, and deprive it of all benefit thereunder; that the act of the Legislature of March 9th, 1900, under which these several steps were taken, was unconstitutional in that it was one step in a gereral scheme to impair complainant's contract rights under the ordinance of Nov. 18th, 1886. The complainant prayed for an injunction, which was granted, but as the injnnction is repeated snbstantially in the final decree of the Court below in this case, it is not necessary to set it out here. (R. p. 53.)

The answer of the Mayor and Aldermen of the City of Vicksburg, filed Jan. 21st, 1901, (R. p.p. 63-79) admitted numerous allegations of the bill and denied others, but defended the case substantially upon the following grounds:

1st. That the Court below was without jurisdiction to try the case.

2nd. That the ordinance of Nov. 18th, 1886, was void because it was not passed pursuant to the advertisement

for bidders, as required by the city charter of the City of Vicksburg.

3rd. Because the contract was personal and not assignable, and the complainant had not and could not acquire the same.

4th. That complainant could not collect the hydrant rentals because they were unreasonable and extortionate.

5th. Because the state had the right to regulate the rates to be charged by the Water Works Company, both to the City of Vicksburg and to the individual consumers.

6th. Because the city had the right to build a water works under the contract, if it saw fit to do so.

7th. Because the complainant had forfeited its contract by not having complied with its terms and obligations, in that it had not furnished an adequate supply of good and wholesome water and had not furnished sufficient pressure for the fire hydrants.

The case was tried in the court below solely on the question of jurisdiction. The learned judge decided that he did not have jurisdiction and dismissed the case for that reason. An appeal was taken to the Supreme Court, and the case was reversed and remanded to the Court below with instructions to proceed to try the case on its merits. 185 U. S., p. 65, et seq.

On Dec. 2nd, 1903, the City Water Works and Light Company, a South Dakota corporation, filed its petition in the case, alleging that it had purchased all the property, real and personal, of the Vicksburg Water Works Company, together with its contract rights under the ordinance of Nov. 18th, 1886, and was in the possession of and was operating the plant, and asked to be substituted as complainant in the case. With its bill it filed the deed of conveyance. (R. p.p. 103–4–5.)

On the 12th, day of January, 1904, the Court below, at the instance of both parties, and before the petition of the City Water Works & Light Company had been acted upon,

set down the case for final hearing on the 2nd, day of May, 1904, at Jackson, Mississippi. (R. p. 110.) Depositions were thereafter taken on both sides. From some cause not shown by the record, the case was not tried on the 2nd, day of May, 1904, the day on which it was set for trial, but on that day the City Water Works & Light Company moved that its petition to be substituted as complainant in the case be granted; and the Vicksburg Water Works Company filed its consent to that effect. (R. 111.) On May 5th, the City Water Works & Light Company filed its original bill in the nature of a supplemental bill, setting out verbatim the original bill in this case, with all of its exhibits, and averred that it had purchased the property and franchises of the Vicksburg Water Works Company, that it was in the possession of the same, and wound up by praying for appropriate relief. (R. p.p. 118–168.

On the 13th, day of May, the City Water Works & Light Company moved the Court for leave to withdraw its petition filed December 2nd, 1903, asking to be substituted as complainant, also its original bill in the nature of a supplemental bill, filed May 5th, and all exhibits to said bill, and the Vicksburg Water Works Company moved to withdraw its consent to the filing of said bill and the substitution of the City Water Works & Light Company as complainant. (R. p. 169.) The motion was granted. (R. p. 170.)

Thereupon the Vicksburg Water Works Company moved the Court to strike out cross interrogatories 135 to 144, inclusive, addressed to M. O. Crumpler, and the answers thereto, and all other questions and answers relating to the City Water Works & Light Company. (R. p. 170.)

The defendant objected to the striking out of these questions and answers, but the objection was overruled and an order made striking them out. (R. p. 179.) The defendant then asked leave to file a supplemental answer, which it presented with its motion, for the purpose of showing that the Vicksburg Water Works Company had sold all its real and personal property to the City Water Work & Light Company, and that it no longer had any interest in the

subject matter of the litigation, and that it had no right to the hydrant rentals, which it claimed, and that respondents be allowed time within which to prove these facts, but the Court overruled the motion and refused to allow the filing of the supplemental answer and time to prove its contents, and the case was heard on the pleadings already made up and the evidence, which is contained in the record, and on the final hearing the Court entered the following decree:

"FINAL DECREE.

VICKSBURG WATER WORKS COMPANY,

vs.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, MISSISSIPPI.

Equity No. 41.

This day this cause came on to be heard in accordance with the motion of complainant and defendant filed January 12, 1904, and the order of this court on the hearing of said motion rendered on the said January 12, 1904, upon the original bill, amended and supplemental bill, exhibits, answer of defendants, proof and exhibits, and the court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises, and being satisfied that the complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:

First. That the defendant, The Mayor and Aldermen of the City of Vicksburg, be and is hereby perpetually enjoined from abrogating or taking away or from assuming to abrogate or take away the franchises or contract rights of complainant under and by virtue of the ordinance, franchise or contract of said defendant entitled "An Ordinance to provide for a supply of water to the City of Vicksburg in Warren County, Mississippi, and to its inhabitants," contract-

ing with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said City of Vicksburg an option to purchase the said works, ordained the 18th day of November, 1886, approved by John W. Powell, mayor, November 19, 1886, being the ordinance, contract, and franchise marked Exhibit 'B' to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, contract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder.

Third. That said defendant be and is hereby directed to rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows:

Resolved, 'That the Mayor be and is hereby instructed to notify the Vicksbnrg Water Works Company that the Mayor and Aldermen deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as shall be necessary to determine the rights of the city in the premises.'

And also rescind the ordinance or resolution of said defendant adopted the 7th, day of February, 1901, when the said defendant adopted the report of the committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the Legislature of the State of Mississippi, approved

March 9, 1900, and from issuing bonds under and by virtue of said act or any other act, or ordinance for the purpose of erecting water works of its own during the period prescribed in said ordinance, contract and franchise.

Fifth. That the said defendant refrain from constructing water works of its own until the expiration of the period prescribed in the said ordinance, contract and franchise dated the 18th of November, 1886.

Sixth. That the said defendant be and is hereby required to pay all moneys due or owing or that may hereafter be due or owing to said complainant under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and hereby is perpetually enjoined from making or adopting any resolution or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise, until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be and is hereby enjoined from permitting any further connections for the conveyance of sewerage or excremental matter, with the storm sewer or culvert located on Washington street, City of Vicksburg, and the defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the Yazoo or Mississippi river below the intake pipe of complainant, provided that if the defendant is unable to construct or extend said sewer or culvert and construct said outlet within twelve months from this date, it can apply to this court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed. Ordered, adjudged and decreed this 18th day of May, 1904.

H. C. NILES,
Judge."

ASSIGNMENT OF ERRORS.

VICKSBURG WATER WORKS COMPANY,
Complainant.
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG,
Respondent.

Now comes the respondent and files the following assignment of errors upon which it will rely:

1st. That the United States Circuit Judge erred in allowing the City Water Works & Light Company to withdraw its petition filed in said cause on December 2nd, 1903, whereby it prays to be admitted as a party complainant and also allowing the said City Water Works & Light Company to withdraw its original bill in the nature of supplemental bill filed in said cause on the —— day of May, 1904, and the said court erred in allowing the complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill authorizing the withdrawal of said several papers being in words and figures as follows, to-wit:

This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2nd, 1903, and its original bill in the nature of a supplemental bill filed the 8th day of May, 1904, with all exhibits and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent to the filing of said bill, and the Court being fully advised in the premises doth hereby order, adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

2nd. The court erred in refusing to allow respondent to file a supplemental answer setting up that the said City

Water Works & Light Company was an essential party complainant and that unless it should be made a party complainant the court could not proceed but must dismiss the bill.

3rd. The court erred in refusing to continue said cause on the motion of respondent after he had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill whereby it sought to be named a party complainant in said cause and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

4th. The court erred in granting the complainant's motion to strike from the evidence interrogatories number 135–136–137–138–139–140–141–142–143–147 propounded to witness M. O. Crumpler and the answers thereto and the said interrogatories and answers being as follows, to wit:

Cross Int. 135. Mr. Crumpler what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not; it has simply sold out what property it had to the City Water Works & Light Company.

Cross Int. 136. It has no property of any kind whatever?

Ans. No sir.

Cross Int. 137. What business is it now engaged in carrying on?

Nothing.

Cross Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

Cross Int. 139. What corporate act or acts, if any, has it done since the 1st of December, 1903?

Ans. I don't know of any except in winding up its business?

Cross Int. 140. If it has no property and is carrying on no business what further business has it to wind up?

Ans. It is winding up the accounts that belong to the company.

Cross Int. 141. It does then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

Cross Int. 142. Then when you said that it had no property you meant that it had no tangible property. I mean that it had no water works or anything of that kind.

Ans. Yes, sir.

Cross. Int. 147. You are the manager of the new company, the City Water Works & Light Company, the same as you were the manager of the old company; The Vicksburg Water Works Company, are you not?

Ans. Yes, sir.

5th. The said court erred in rendering final decree against respondent because said decree is contrary to the law and the facts as stated in the pleadings and proof before said court.

6th. Said court erred in perpetuating by its final decree the injunction against respondent restraining it from building a water works plant of its own.

7th. The court erred in granting a mandatory injunction against respondent commanding respondent within one year to build and construct a sewer whereby the sewer now existing on Washington Street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi River south of the intake pipe of complainant.

In order that the foregoing assignment of errors may appear of record respondent presents the same to the court and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded, all of which is respectfully submitted.

.....

Solicitors for respondent.

II. ARGUMENT.

Complainant's motion to dismiss is coupled with a motion to affirm the decree of the Court below. The motion to dismiss is based upon three grounds, namely; (1) Failure of counsel for the appellant to sign the assignment of errors. (2) Failure of the Clerk to certify and send up with the record Exhibit B to the deposition of M. O. Crumpler. (3) Want of jurisdiction on the part of this Court to hear and determine the matters of law and fact involved.

The motion to affirm is based upon the ground that the appeal is frivolous and was taken for delay only.

ON MOTION TO DISMISS.

1. The failure of counsel for the appellant to sign their names to the assignment of errors was irregular, of course, but not such an irregularity as to defeat the ends of justice. We have read the Supreme Court rules on this subject and we do not find a rule that requires the attorneys to sign the assignment of errors with their names, and no penalty is fixed for failing to do so. In one sense it may be said that the assignment of errors is signed, because it is signed "Solicitors for respondent." There is no trouble to look back over the record and see who were the solicitors for the respondent. Moreover, the petition for appeal and the assignment of errors were duly filed in the case in the court below, were submitted to the judge and approved by him in their then form, and the appeal duly allowed by order entered of record in the case.

The failure to sign the assignment of errors was a mere inadvertance on the part of counsel, and we have filed a motion to be allowed to sign the assignment of errors *nunc pro tunc*, and that will correct any defect which there is in this assignment of errors.

2. Failure of the Clerk to certify and send up as a part of the record Exhibit B to the deposition of M. O. Crumpler

was not the fault of the Appellant, and their appeal should not be dismissed for that reason, but they should be allowed to supply the record. We have filed a suggestion of diminution and have asked to have this Exhibit copied and sent up. Coupled with the suggestion of diminution is an affidavit to the effect that the map has now been found and can be certified to this Court, and will be if we are permitted to have it done. We are informed by counsel in their brief that this map shows the different streets leading into Washington Street, in which sewers have been laid which lead into the storm sewer on Washington Street. We are willing to concede that the map shows exactly what counsel says it shows, and that, it occurs to us, ought to be satisfactory to them, if it is justice they are after and not a mere technical advantage. Moreover, the testimony of M. O. Crumpler shows exactly in what streets sewers have been laid leading into the storm sewer on Washington Street. In other words, the record shows otherwise than by the exhibit itself all that the exhibit would prove were it properly copied into the record. This ought to be sufficient, but if the Court thinks it is not then we ask that our motion to supply it be granted.

3. Want of Jurisdiction. Counsel for the appellee next contend that this Court is without jurisdiction to hear this appeal, for the reason that the law and the facts do not bring the case under the act of March 3rd, 1891, providing for appeals direct to this Court.

In support of their contention counsel for appellee rely mainly upon the decision of this court on the former appeal, reported in 185 United States, page 65, *et seq.*, wherein the question of the jurisdiction of the Federal Court was presented and decided; and they contend that the decision of this court in that case is decisive of this appeal. We do not so understand it.

Our view of the decision in that case is that it is authoritative only on the question as to whether or not the bill in that case presented a Federal question. The Court in its opinion starts out by saying:

"The sole question for our consideration is whether the "bill as originally filed and as amended, presented a Fed- "eral question. As the party plaintiff and the party de- "fendant were both corporations and citizens of the same "state, the Circuit Court of the United States could not "take jurisdiction of a controversy between them unless "the complainant laid grounds for that jurisdiction by "asserting rights arising under the constitution or laws of "the United States, and such assertion must appear in the "complainant's statement of its own claim."

In other words, the Court was then considering whether on the complainant's own showing (without reference to the answer on file or the evidence which might be thereafter adduced on the hearing) complainant had made a case cognizable by the Federal Court. With reference to the act of March 9th, 1900, this Court, in its opinion. says:

"Whether this act of the Legislature is, in its terms, "subject to these objections" (that is, that it was unconsti- "tutional, for reasons named in the bill) "or whether it "may be regarded as merely authorizing the city to pro- "ceed in such a manner as to not conflict with the existing "contract obligations, we need not determine at this stage "of the case."

Certainly this question was also left open for the decision of the proper tribunal.

Referring to the objections urged in the brief of the appellee to the validity of the contract because it undertakes to bind the city for a period of thirty years, because an attempt to barter away the legislative power of the city authorities and because creating an indebtedness in excess of the charter powers, this Court says:

"We do not wish to be understood as now deciding "such questions in the present case, for we are only con- "sidering whether or not the Circuit Court had jurisdiction "to consider them."

Again the Court says:

"Nor can we consider allegations made in behalf of the "city in its answer as to misconduct of the water works

" company, in respect to which no issue was found nor
" proofs taken in the court below. They must be deter-
" mined by the proper tribunals, which will pass upon the
" merits of the case."

It is clear, from these excerpts from the opinion of the court, as well as from the opinion itself, that the sole question decided or intended to be decided by this court in that case was the question of jurisdiction, and that the entire merits of the controversy were expressly left open by the court for future examination and decision.

Counsel next contend that where the decree on the second appeal is strictly in accordance with the mandate of the Supreme Court rendered on the first appeal, that the second appeal will not lie, and in proof of this proposition they have cited numerous authorities. We concede the corretness of the principle, but contend that it has no application whatever here. The principle applies, and applies only, where a case has been disposed of by this Court on its merits, and this Court has settled all the principles of law and all the questions of fact involved, and has remanded the case with instructions for a decree to be entered in accordance with its opinion. Of course, in a case like that the Court below has nothing to do but to give effect to the decision of the Supreme Court, and an appeal from a decree of the court below in such a case would really be an appeal from the decision of the Supreme Court itself. Of course, no such appeal ought to be allowed.

They next contend that upon an appeal from proceedings under a mandate directed to the lower court nothing is before the court but the proceedings subsequent to the mandate on the first appeal, and in support of this proposition they have cited numerous authorities taken from Rose's Digest, p.p. 213–214. We recognize the correctness of this proposition also, but insist that it has no application here, because we are not asking the court to consider or decide any question of law or fact which was considered and decided in the first case, and have not brought this appeal here for the purpose

riticising the opinion of this court on the former appeal. We are, therefore, to ascertain the questions of law and arising upon the face of this record upon the merits of ase subject to the filing of the mandate in the court be- and then to determine whether these questions of law fact, or any of them, justify an appeal by us direct to this court.

The propositions of law and fact arising on the face of the record, the final decree and the assignment of errors are briefly stated as follows:

1. The franchise and contract evidenced by the ordinance of Nov. 18th, 1886, with Samuel R. Bullock & Co. is illegal and invalid and not binding upon the appellant, because the ordinance evidencing said contract was not adopted in accordance with the provisions of the charter of the City of Vicksburg.

2. The contract, if validly enacted, was forfeited by the appellees and their immediate vendor, the Vicksburg Water Supply Company, because of their failure to furnish to the city and its inhabitants an adequate supply of good and wholesome water for public and private use, and because of their failure to keep the pressure on the mains sufficiently high to protect the inhabitants of the city of Vicksburg against injuries from fires.

3. The contract, if validly enacted, was personal to Samuel R. Bullock & Company and their vendee, the Vicksburg Water Supply Company, and was not assignable, and did not pass to the appellee by virtue of its purchase under the deed of trust to the Farmers Loan & Trust Company and the quit-claim deed of the Vicksburg Water Supply Company; and the appellee has not shown any right or power in itself to acquire and hold such contract.

4. If the contract did pass by virtue of the conveyances named, to the appellee, it passed subject to the sovereign right of the state to fix and regulate the rates which it should charge both to the city and its inhabitants for water furnished by it and consumed by them.

5. The appellee having been incorporated and organized under the constitution and laws of the State of Mississippi, has no power to take and hold a contract that is not subject to regulation by the State of Mississippi.

6. The appellant had the right, both under the amendment to its charter in 1886 and the act of March 9th, 1900, to construct and operate a water works of its own, but it had no power to contract with another to preclude itself from so doing, and did not, by the ordinance of Nov. 18th, 1886, preclude itself, and the court below erred in enjoining it from building and operating a water works of its own for that reason.

7. The court below erred in granting the mandatory injunction against respondent commanding it, within one year, to build and construct a sewer, whereby the sewer now existing on Washington Street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi River south of the intake pipe of the complainant.

8. On the pleadings. The court below erred: (1) in allowing the City Water Works & Light Company to withdraw its original bill in the nature of a supplemental bill; (2) in refusing to allow the defendant to file its supplemental answer, setting up the fact that the complainant had sold out its plant and was no longer interested in the subject matter of the litigation; (3) in striking out cross interrogatories 135 to 147, inclusive, to M. O. Crumpler, and his answers thereto, showing the sale of said property by the appellee to the City Water Works & Light Company; (4) in proceeding to final judgment and decree without making the City Water Works & Light Company a party to the proceeding, as prayed for in the supplemental answer.

The act of March 3rd, 1891, relating to appeals to this Court, provides that an appeal may be taken direct to this Court from a Circuit Court in the following cases: (Numerals ours)

of criticising the opinion of this court on the former appeal.

We are, therefore, to ascertain the questions of law and fact arising upon the face of this record upon the merits of the case ~~subject~~ subsequent to the filing of the mandate in the court below, and then to determine whether these questions of law and fact, or any of them, justify an appeal by us direct to this court.

The propositions of law and fact arising on the face of the record, the final decree and the assignment of errors are briefly stated as follows:

1. The franchise and contract evidenced by the ordinance of Nov. 18th, 1886, with Samuel R. Bullock & Co. is illegal and invalid and not binding upon the appellant, because the ordinance evidencing said contract was not adopted in accordance with the provisions of the charter of the City of Vicksburg.

2. The contract, if validly enacted, was forfeited by the appellees and their immediate vendor, the Vicksburg Water Supply Company, because of their failure to furnish to the city and its inhabitants an adequate supply of good and wholesome water for public and private use, and because of their failure to keep the pressure on the mains sufficiently high to protect the inhabitants of the city of Vicksburg against injuries from fires.

3. The contract, if validly enacted, was personal to Samuel R. Bullock & Company and their vendee, the Vicksburg Water Supply Company, and was not assignable, and did not pass to the appellee by virtue of its purchase under the deed of trust to the Farmers Loan & Trust Company and the quit-claim deed of the Vicksburg Water Supply Company; and the appellee has not shown any right or power in itself to acquire and hold such contract.

4. If the contract did pass by virtue of the conveyances named, to the appellee, it passed subject to the sovereign right of the state to fix and regulate the rates which it should charge both to the city and its inhabitants for water furnished by it and consumed by them.

5. The appellee having been incorporated and organized under the constitution and laws of the State of Mississippi, has no power to take and hold a contract that is not subject to regulation by the State of Mississippi.

6. The appellant had the right, both under the amendment to its charter in 1886 and the act of March 9th, 1900, to construct and operate a water works of its own, but it had no power to contract with another to preclude itself from so doing, and did not, by the ordinance of Nov. 18th, 1886, preclude itself, and the court below erred in enjoining it from building and operating a water works of its own for that reason

7. The court below erred in granting the mandatory injunction against respondent commanding it, within one year, to build and construct a sewer, whereby the sewer now existing on Washington Street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi River south of the intake pipe of the complainant.

8. On the pleadings. The court below erred: (1) in allowing the City Water Works & Light Company to withdraw its original bill in the nature of a supplemental bill; (2) in refusing to allow the defendant to file its supplemental answer, setting up the fact that the complainant had sold out its plant and was no longer interested in the subject matter of the litigation; (3) in striking out cross interrogatories 135 to 147, inclusive, to M. O. Crumpler, and his answers thereto, showing the sale of said property by the appellee to the City Water Works & Light Company; (4) in proceeding to final judgment and decree without making the City Water Works & Light Company a party to the proceeding, as prayed for in the supplemental answer.

The act of March 3rd, 1891, relating to appeals to this Court, provides that an appeal may be taken direct to this Court from a Circuit Court in the following cases: (Numerals ours)

(1) In any case that invokes the construction or application of the constitution of the United States.

(2) In any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States.

By comparing the propositions of law and fact arising on the record in this case with these provisions of the statute, our right to appeal direct to this Court is clear.

The first ground relates to the validity of the ordinance of November 18th, 1886.

The second to its forfeiture by appellees because of their failure to comply with its terms and conditions.

The third to the power of the Vicksburg Water Supply Company to assign the contract to the appellee.

The fourth to the sovereign power and right of the state to regulate its corporations in the exercise of the powers granted them.

The fifth to the power of the appellee corporation to take and hold a contract or franchise not subject to regulation by the State.

The sixth to the right and power of the municipality of Vicksburg to preclude itself from building a water works system under the amendment to its charter made in 1886; and whether it did so preclude itself by the ordinance of November 18th, 1886.

The seventh to the power of the Court to direct a municipality in the exercise of its governmental functions.

The eighth relates solely to the pleadings.

As we understand the law, if any one of these questions invokes the construction or application of the constitution of the United States, or raises a question as to the constitutionality of the law of March 9th, 1900, then this Court has jurisdiction, not only to determine that question, but to determine every other question which is presented by the record.

In our opinion several of these propositions do directly invoke the construction or application of the constitution

of the United States, or raise a question as to the constitutionality of the act of March 9th, 1900, of the Legislature of the State of Mississippi, hereinbefore referred to.

In Penn. Mutual Life Ins. Co. vs. Austin (1898) 168 U. S., p. 685, this Court held:

"That a direct appeal lies to the Supreme Court of the "United States from a decree of a Circuit Court sustaining "a demurrer and dismissing a bill which in express terms "predicate complainant's right to the relief sought upon "the averment that certain city ordinances and certain "state laws impaired the obligations of the contract."

That is exactly what the bill in this case did.

In Loeb vs. Columbia Tp., 179 U. S., 472, this Court again declared:

"If the claim is made in the Circuit Court, no matter "by which party, that a state enactment is invalid under "the constitution of the United States, and that claim is "sustained or rejected, this Court will review the judgment "at the instance of the unsuccessful party, whether plaintiff or defendant."

In the case of Connelly vs. Union Sewer Pipe Co., 184 U. S. p. 544, this Court again held that it

"Has jurisdiction to review a decree of the Circuit "Court in all cases in which a question as to the constitu-"tionality of a state statute is decided against the claim of "either party."

In its original bill (R. p. 8) the complainant sets up the act of March 9th, 1900, and charges that said act is unconstitutional for many reasons, and among others, asserts that it is an ex post facto law and impairs the obligations of complainant's contract. The *gravamen* of its complaint was that this act was unconstitutional and void. Moreover, the Court in the decree which it rendered, although it does not say so in express terms, was bound nevertheless to have declared that act of the Legislature unconstitutional upon the

ground that it impaired the obligation of complainant's contract. Not only, therefore, was there a contention raised as to the constitutionality of that law and as to the constitutionality of the proceedings of the Board of Mayor and Aldermen thereunder and otherwise, but that contention was sustained by the Court below. It follows, therefore, that the appeal was properly taken to this Court, and the motion to dismiss for want of jurisdiction ought to be overruled.

Before the Court can decide that the contract of November 18th, 1886, had been, or was about to be, impaired, because of the acts and conduct of the appellant complained of in the bill (which is a constitutional question) it must decide.

1. That there was a contract in existence to be impaired.

2. That the contract was exclusive as against the appellant.

3. That the appellee is the owner of that contract and has the right to enforce it.

1. In deciding the first point the Court must incidentally decide; (1) that the contract of Nov. 18, 1886, was legally adopted and entered into by the appellant; (2) that it has not been forfeited by reason of the failure of the appellee and its predecessor to comply with its terms.

2. In deciding the second question it must incidentally decide; (1) whether the city had athority to make a contract to exclude itself; (2) whether it, by this contract, did exclude itself; (3) to what extent it excluded itself.

3. In deciding the third point it must incidentally decide; (1) whether the Vicksburg Water Supply Company had the power and right to assign the contract; (2) whether the appellee had the right and power to purchase it; (3) whether it has the right and power to own and exercise the exclusive right under the Constitution and laws of Mississippi.

So we see that every proposition of law and fact raised, except the 7th and 8th, is directly or indirectly involved in this decision, and these will be discussed, in part, on the motion to affirm.

ON THE MOTION TO AFFIRM.

In their argument on the motion to affirm the decree of the court below, counsel for appellee have necessarily gone somewhat into an argument of the case on its merits, and we will follow them sufficiently far, we hope, to show that this appeal is not frivolous and was not brought for delay only, as contended for by them.

1. ON THE INVALIDITY OF THE CONTRACT.

If the ordinance of November 18th, 1886, was adopted in violation of the provisions of the city charter of the City of Vicksburg, it is void. Section 25 of the city charter reads as follows:

"Be it further enacted that the Board of Mayor and "Aldermen shall not make any contract involving the ex- "penditure of corporation funds relating to work on public "streets or the erection, extension or repair of public build- "ings, where the cost of the proposed work shall exceed "$500.00, or for materials to be furnished exceeding $200.00 "in value, except in the following manner: Upon the di- "rection of the Board, the Mayor shall advertise for sealed "proposals to do the contemplated work for ten days in a "newspaper published in the City. At the first meeting of "the Board after such publication the Mayor shall open "and lay before the Board all proposals received by him "and the Board shall accept the lowest and best bids or "they may reject all bids made and direct publication to be "made for other proposals." Law of Miss., 1884, 435.

The bill in this case does not even allege that the contract was adopted in pursuance of any advertisement. It does allege, however, that the contract was let upon competitive bids. The answer denies that allegation and puts upon the appellee the burden of proving it. No proof was offered showing that the contract had been let in pursuance of the advertisement, as provided for by Sec. 25 of appellants charter, and as the contract related to work on the public streets and the cost of the proposed work exceeded $500.00, the ordinance was adopted in violation of the city charter,

and is, therefore, void. Van Ripen vs. Jersey City, N. J. L., 262, is precisely in point.

2. ON FORFEITURE OF THE CONTRACT.

By the ordinance of November 18th, 1886, the Water Works Company agreed:

"To furnish an adequate supply of good and wholesome "water to the City of Vicksburg, Mississippi, and to its in- "habitants, for public and private use." (R. p. 15, Sec. 1.)

"The water shall be taken from such point as may be "free from all sewerage contamination, and shall be good, "wholesome water, fit for all purposes of domestic con- "sumption." (R. p. 17, par. 2.)

"But the city shall not be liable to pay the rental for "any fire hydrant during such time as a proper supply of "water cannot be procured therefrom," etc, etc. (R. p. 20, par. 1.)

The appellant's contention is and has been all the while, that the Vicksburg Water Supply Company and its successor, the appellee, the Vicksburg Water Works Company, failed to comply with the foregoing provisions of the contract; that the water furnished by these companies was frequently inadequate to protect the city and its inhabitants from fire; that the water furnished was muddy and not free from sewerage contamination, and was not good wholesome water, fit for all purposes of domestic consumption, and for these reasons the contract has been forfeited.

In support of these contentions we refer the court to the testimony of the following witnesses, namely:

W. L. Trowbridge, Mayor, R. p. 305.
J. J. Hayes, Alderman, R. p. 330.
D. A. Campbell, Alderman, R. p. 336.
Chas. Schuler, Asst. Chief Fire Dept., R. p. 344.
W. O. Smith, Alderman, R. p. 350.
D. Montgomery, Alderman, R. p. 356.

3. ON THE NON-ASSIGNABILITY OF THE CONTRACT.

If this contract was personal with Samuel R. Bullock & Company and its vendee, the Vicksburg Water Supply

Company, then the Vicksburg Water Supply Company had no right or power to assign it to the appellee, and appellee's effort to acquire the title to the contract by purchase under the deed of trust to the Farmers Loan & Trust Company, trustee, and under the quit-claim deed of the Vicksburg Water Supply Company hereinbefore referred to, was nugatory.

By Sec. 5 of the ordinance of Nov. 18th, 1886, Samuel R. Bullock & Company were authorized to procure the organization of a water works corporation under the laws of Mississippi, and were authorized to assign to it all the rights and privileges acquired under the ordinance, but the appellants never agreed that any other or further assignment of such rights and privileges should be made to any one.

On March 1st, 1887, Samuel R. Bullock & Co. assigned and transferred, under and by virtue of this 5th section of the aforesaid ordinance, all their rights and privileges under the ordinance to the Vicksburg Water Supply Company, which had been incorporated under the laws of Mississippi for the purpose of taking over the contract and building a water works and operating the same. This assignment was in accordance with the contract, but there never has been any other transfer or assignment made which was acceptable to the appellants and which was approved by them, and, as said before, they have consistently and persistently refused to recognize the pretended transfer to the Vicksburg Water Works Company, and refused to treat with it as the owner of the ordinance of Nov. 18th, 1886, or as entitled to any rights whatever thereunder.

That this contract was personal and not assignable and that the Vicksburg Water Supply Company was without power or right to assign the contract to the Vicksburg Water Works Company and to compel the appellants to look to them for its performance, and that appellants would be bound thereby without their consent, is, we believe, conclusively established by the following authorities:

Matthews vs. Board of Corp. Comm. (1897) 97 Fed. Rep., 400.

Geo. W. Thomas, et al vs. W. Jersey R. R. 101 U. S., 71.

Gibbs vs. Consolidated Gas Co. of Baltimore City, 130 U. S., 396.

St. Louis R. R. Co. vs. Gill, 156 U. S., 649.

Norfolk vs. Pendleton, 166 U. S. 667.

Adams vs. Y. & M. V. R. R. Co., 180 U. S. I.

Brunswick Gas Lt. Co., vs. United Gas Co., 85 Me., 535.

Commonwealth vs. Smith (Mass.) 87 Am. Dec. 672.

Chicago Gas Lt. Co. vs. Peoples Gas Co., 2 Am. St. Rep. 124.

Nor has the appellee shown any right or power to acquire and own this ordinance contract and franchise. The burden was certainly upon the appellee to show, in addition to the mere fact of its incorporation which is admitted, when it was incorporated; that it was authorized to supply the City of Vicksburg and its inhabitants with water; that it was authorized to own and operate a water works for that purpose; and that it was authorized to acquire and own the contract and franchise granted by appellants to Samuel R. Bullock & Co., together with all their rights and privileges thereunder, and these facts it did not prove.

The only way it might lawfully prove them was by the production of its charter; but the appellee, while it filled all manner of exhibits with its original and amended bill, for some cause best known to itself, failed to file its charter the evidence of its existence, and the measure of its powers, either as an exhibit to its pleadings or as a part of its evidence.

If there was any allegation in the bill, or proof in the files covering these fatal omissions, it would not be competent for that purpose, but there is none. So that the court is absolutely without any evidence competent or otherwise as to when the Appellee Company was chartered and organized; the objects and purposes for which it was created, and the powers with which it was endowed.

Having failed to show any right or power in itself to acquire and own the contract and franchise of Nov. 18th, 1886, the suit, being based upon that right must fail.

4. THE RIGHT TO REGULATE RATES.

But if mistaken in the foregoing views, and the contract was assignable and did pass to the Vicksburg Water Works Company without the consent or approval of the appellants, then we contend that it passed subject to the sovereign right and power of the State of Mississippi to fix and regulate rates to be charged to the city and to the individual consumers of water whenever it chose to do so, and the fixing and regulating of such rates would not impair complainant's contract. In Stone vs. The Farmers Loan & Trust Company, 116 U. S., 636, this court, speaking with reference to the power of the State to regulate its corporations, said:

> " The power to regulate is a power of government, con-
> " tinuing in its nature, and if it can be bargained away at
> " all it can only be by words of positive grant, or something
> " which is in law equivalent, and if there is reasonable doubt
> " it must be resolved in favor of the existance of the power."

In the case of Providence Bank vs. Billings, 14 Peters, 514, this court, speaking through Chief Justice Marshall, says:

> " This abandonment ought not to be presumed in a case
> " in which the deliberate purpose of State to abandon it does
> " not appear. This rule is elementary and the cases in our
> " reports where it has been considered and applied are nu-
> " merous."

Of course, the State could, if it desired to do so, abandon its governmental right and deprive itself of the power to regulate its corporations, but it must be done by apt words about whose meaning there can be no doubt; and we insist that the legislative grant by the State to the city of Vicksburg "to provide for the erection and maintenance of a system of water works to supply said city with water, and to that end to contract with a party or parties to build and operate a water works," does not evidence any desire or purpose on the part of the State of Mississippi to deprive itself of the power to fix and regulate rates to be charged by the

party or parties to whom the contract should be let to build and operate a water works. This contention is, we believe, sustained by the following authorities:

Collins vs. Sherman, 31 Miss., 679.
Vol. 9 Rose's Notes, 29. (Mun. vs. Ill., 94 U. S., 114.)
R. R. Co. vs. Stone, 116 U. S., 307–347.
Norfolk vs. Pendleton, 156 U. S. 667.
San Diego vs. National City, 174 U. S.. 739.
Owensboro vs. Owensboro W. W. Co., 191 U. S., 358.
Rogers Park Water Co. vs. Fergus (1901) 180 U. S., 624.
Stanislaus County vs. San Joaquin C. & I. Co., 192 U. S., 201.
Rushville vs. Rushville, 15 L. R. A., 321 and note, 322.
Knoxville W. W. Co. vs. Knoxville, 189 U. S., 434.

5. ON THE POWER OF COMPLAINANT TO HOLD A CONTRACT NOT SUBJECT TO LEGISLATION BY THE STATE.

By Section 178, Article 7, of the Constitution of Mississippi, adopted November 1st, 1890, it was provided as follows:

"Corporations shall be formed under general laws only. "The Legislature shall have power to alter, amend or re- "peal any charter of incorporation now existing and revoc- "able and any that may hereafter be created, whenever in "its opinion it may be for the public interest to do so; pro- "vided, however that no injustice shall be done to the stock- "holders."

The Legislature of the State of Mississippi, pursuant to this constitutional requirement, did provide by general laws for the incorporation of private corporations. Revised Code of Mississippi, 1892, Chapter 25.

On March 9th, 1900, the Legislature of the State of Mississippi authorized the City of Vicksburg to build or buy a water works and sewerage system and to issue bonds for that purpose. The material parts of this act will be found copied in the preceding pages of this brief to which reference is made. On March 19th, 1904, about two months prior to

the final decree in this case, the Legislature of the State of Mississippi passed another act, the material parts of which are as follows:

"SECTION 1. *Be it enacted by the Legislature of the State* " *of Mississippi*, That the corporate authorities of any city, " town or village now or hereafter incorporated under any " general or special laws of this state, in which any individ- " ual, company or corporation has been or hereafter may be " authorized by said city, town or village to supply water, " electric light or gas to said city, town or village, or the in- " habitants thereof, be and they are hereby empowered to " prescribe by ordinance maximum rates and charges for " the supply of water, electric light or gas furnished by such " individual, company or corporation to such city, town or " village or the inhabitants thereof, such rates and charges " to be just and reasonable. And in case the corporate au- " thorities or any such city, town or village shall fix unjust " and unreasonable rates and charges the same may be re- " viewed and determined by the Circuit Court of the County " in which said city, town or village may be; provided, that " this act shall not be construed so as to impose [impair] " the effect or obligation of any valid or binding contract " with any water works company, electric light company or " gas company now existing or heretofore made with any " individual, or water company, electric light or gas com- " pany." Laws of Mississippi, 1904, 231.

If the appellee corporation came into existence under the Constitution of 1890 and the municipal chapter of the State of Mississippi enacted in 1892, it can exercise no powers and no rights which are prohibited by the constitution and laws of Mississippi. Moreover its charter was and is subject to alteration, repeal or amendment, and has been amended by the act of 1904 above quoted. It cannot complain of any of these laws ~~because it knew they~~ which were in existence when it accepted its charter. Its rights and privileges are fixed by these laws and the decree of the Court which held, in effect, that they were not, is erroneous, as will be abundantly shown, we, think, by the subjoined authorities:

Hamilton Gas Lt. Co. vs. Hamilton, 146 U. S., 258.
Norfolk vs. Pendleton, 156 U. S., 667.

Griffin vs. Goldsboro, N. C. 41 L. R. A., 240.
Redland vs. Redland, 121 Cal., 365.
Matthews vs. Bd. of Corp. Comm., 97 Fed. Rep., 400.
Greenwood vs. Union Frt. Co., 105 U. S., 13.
Newburyport W. W. Co. vs. Newburyport, 193 U. S., 562.
Rogers Park Water Co. vs. Fergus, 180, U. S., 702.
County of Stanislaus vs. San Joaquin C. & I Co., 192 U. S., 202.
Winchester & Lexington Turnpike Rd., vs. Croxton, 33 L. R. A., 177.
Y. & M.V. R. R. Co., vs. Adams, 180 U. S., p. 1 & p. 26.
Walla Walla Water Co., vs. Walla Walla, 172 U. S., 1.

If it came into existence prior to the constitution of Miss., 1890, it should have pleaded and proven that fact.

6. ON THE EXCLUSIVE FEATURE OF THE CONTRACT.

The Court below erred in holding that the appellee had the sole and exclusive right to build and operate water works in the City of Vicksburg and in enjoining the City of Vicksburg from building a water works of its own and from issuing bonds for that purpose under the act of March 9th, 1900. The City of Vicksburg was empowered, under the amendment to its charter of 1886 and also under the act of March 9th, 1900, to buy or build and operate a water works of its own if it saw fit to do so, and it has that power now, unless:

1. It was authorized by the aforesaid amendment to preclude itself by contract from constructing and operating water works:

2. It did, by the ordinance of November 18th, 1886, so preclude itself.

3. The appellee company has the right to acquire and hold the exclusive right to operate a water works in the City of Vicksburg.

We deny each and every one of said propositions.

(1.) Whether the appellants are authorized by the amendment of 1886 to preclude themselves depends upon the

proper construction of the words fixing the power. It is expressed in these words:

"To provide for the erection and maintenance of a sys-
" tem of water works to supply said city with water, and
" to that end to contract with a party or parties who shall
" build and operate water works."

Unless it was plainly the intention of the State to authorize the city to make an exclusive grant, and unless that intent has been plainly expressed in the amendment of Nov. 18th, 1886, quoted above, the city had no power to make an exclusive grant. We insist that no such purpose was intended or expressed, and in support of our contention we cite the following authorities, which we think are conclusive of that view:

Freeport W. W. Co. vs. Freeport, 180 U. S., 587.
Saginaw Gas Lt. Co. vs. Saginaw, 28 Fed. Rep. ——
Wright vs. Nagle, 11th Otto, 791.
Greenville W. W. Co. vs. Greenville, 7 So. Rep. 409.
Collins vs. Sherman, 31 Miss., 679.
Gains vs. Coats, 51 Miss., 335.
Detroit Citizens St. Ry. Co. vs. Detroit Ry., 171 U. S., 48.
City of Brenham vs. Brenham W. W. Co., 67 Texas, 542.
Knoxville W. W. Co. vs. Knoxville, 189 U. S., 434.
Helena W. W Co. vs. Helena, 195 U. S. 383.
Long vs. Duluth, 49 Minn., 290.
Hamilton Gas Lt. Co. vs. Hamilton, 146 U. S., 258.
Skaneateles W. W. Co. vs. Skaneateles, 184 U. S., 354.
Smith vs. Town of Westerly, 35 Atl. Rep., 526.
Rogers Park W. W. Co. vs. Fergus, 180 U. S., 624.
Walla Walla Water Co. vs. Walla Walla, 172 U. S., 1.

(2) Whether or not the City of Vicksburg made a contract precluding itself from building a water works and operating the same must be determined by the language of the grant itself. The language of the grant is as follows:

" That in consideration of the public benefit to be de-
" rived therefrom the exclusive right and privilege is

" hereby granted for the period of thirty years from the " time this contract takes effect, etc.

The words "exclusive right and privilege" were intended to apply to all third parties, as against whom the exclusive right and privilege was granted to construct and operate a water works. It is true the city could not by its contract exclude all third parties, because such a contract would have been a monopoly and would have been void for that reason, but it is possible that the contracting parties did not ~~then~~ know the law in that regard. These words were never intended to be applied to the City of Vicksburg. If it had been the purpose of the parties to the contract to exclude the city from building and operating a water works of its own, apt words would have been used as was done in the case of Walla Walla W. W. Co. vs. Walla Walla, 172 U. S., 1. In that case the city of Walla Walla expressly contracted that it would not construct and operate a water works, etc., etc. In construing this language all doubts must be resolved in favor of the appellant and against the company; and so construed it does not preclude the city from constructing and operating a water works of its own.

S. W. Mo. Lt. Co. vs. Joplin, 191 U. S., 150.
Bienville W. W. Co. vs. Mobile, 175 U. S., 109.
Bienville W. W. Co. vs. Mobile, 186 U. S., 212.
Freeport W. W. Co. vs. Freeport, 180 U. S., 587.

Again, if it should be held that the city had the power, under the act of 1886, to preclude itself, and that it did preclude itself by the ordidance of November 18th, 1886, then it must be held to have precluded itself only to the extent fixed by the contract, which was to rent from Samuel R. Bullock & Co. 90 hydrants at an annual rental of $65.00 each. This was the full extent to which it was bound to take water from the appellee. It may be that the city needs a great many more than 90 fire hydrants. It may be that it will need ten times that number within thirty years from the date of the contract. It may be that it needs water for its public buildings, etc., etc. It may be that it will need water to flush its sewers which it is authorized to build under the

act of March 9th, 1900. It may be that it will need water for its public fountains. Certainly the city is under no obligations to take water from the Vicksburg Water Works Company, for any of said purposes, or for any other purposes, and if it is not, it certainly has the right to construct its own water works for the purpose of supplying its needs in excess of the ninety hydrants and the court below erred in enjoining it from building a water works of its own and from availing itself of the benefits of the act of March 9th, 1900, authorizing it to issue bonds for that purpose.

(3) But if it should be held that the city was authorized by the amendment to the city charter to preclude itself, and that it did preclude itself by the contract of Nov. 18th, 1886, then we say that the appellee water company cannot avail itself of the exclusive feature of the contract, for several reasons. The appellee having failed to file its charter, showing its powers, we have no evidence whatever that it has the power to own and to exercise the exclusive right to operate a water works in the City of Vicksburg; in fact, we have no evidence that it has the power to own and operate a water works at all.

As said before, we have no evidence as to exactly when the appellee came into existence. If it came into existence after the Constitution of Mississippi of 1890, and after the act of March 9th, 1900, authorizing the City of Vicksburg to construct and operate a water works of its own, then it cannot be heard to say that it has the exclusive right as against the City of Vicksburg to operate a water works in the City of Vicksburg. If it came into existence prior to the Constitution and act of March 9th, 1900, then it was its duty to plead and prove that fact, and failing to do so it has failed to establish any exclusive right in itself to operate a water works in the City of Vicksburg. But it may be argued that the Vicksburg Water Supply Company had the exclusive right as against the City of Vicksburg, to build and operate a water works in the city and the appellee corporation purchased that right. Our answer is that this creature of the State could not exercise a power expressly forbidden by the

constitution and laws of the State unless it was in existence and had acquired these rights prior to the enactment of the constitution and laws referred to, and that fact is not shown by the ~~evidence~~ record. If, being incorporated after the enactment of the constitution and laws aforesaid, it can buy and exercise the exclusive right to operate a water works system in the City of Vicksburg, then indeed is the creature greater than the creator.

7 EXTENSION OF THE WASHINGTON STREET SEWER.

The eighth paragraph of the final decree of the Court reads as follows:

"That the said defendant be and is hereby enjoined "from permitting any further connections for the convey- "ance of sewerage or excremental matter, with the storm "sewer or culvert located on Washington street, City of "Vicksburg; and the defendant is hereby directed and com- "manded within twelve months from this date to extend "said sewer or culvert and construct an outlet therefor so "as to discharge said sewerage or excremental matter into "the Yazoo or Mississippi River below the intake pipe of "complainant.

As to that part of the decree which enjoins the appellant from permitting further connections for the conveyance of sewerage or excremental matter with the storm sewer on Washington Street we make no objection, for the reason that the continuance of the practice might contaminate the appellee's water supply and operate injuriously to the public health. But to that part of the decree which directs and commands the appellant to extend this sewer so as to cause it to discharge the sewerage or excremental matter into the Yazoo or Mississippi River below the intake pipe of the defendant, we do object, and think we are safe in saying that this part of the decree has no precedent in the annals of the reported cases.

Counsel for the appellee have devoted thirty pages of the ninety-four page brief in this case to this paragraph of the decree in an effort to uphold it. To follow them through-

out such a lengthy argument would be without pleasure to us and without profit to the court. We content ourselves, therefor, with reference to their argument, by saying that a principle of law which requires 30 pages of printed argument to uphold it is of doubttul validity at best; that no aggregation of words can make that white which is black, and no amount of argument can convert error into truth.

Whatever may be said as to the other paragraphs of the final decree the one just quoted is certainly erroneous in the particulars named. In the first place, the pleadings and the evidence do not warrant such a decree, and in the second place the court had no power to make it.

(1) There was no allegation in the bill that the proposed extension was feasible or possible, or that it ought to be made; nor was there any prayer in the bill that such extension should be made; nor was there any evidence offered that the extension of the sewer as commanded by the decree was feasible or possible, or that the cost of the same was within the ability of the appellants to pay. In other words, the decree was made without pleadings or evidence on that ground and without offering to the appellants any opportunity whatever to show that the extension was impossible and beyond the ability of the appellants to make.

For aught that court knew and for aught this court knows, the appellants have been required to run sewerage up-hill for in the neighborhood of two miles; that it might require miles of tunnelling to make the extension. In addition, it might cost an amount of money entirely beyond the ability of the city to pay, etc., etc. Certainly, there should have been some pleadings suggesting, and some evidence ~~providing~~ showing, its feasibility etc., etc., before the decree should have been made, and as there was none the action of the court in commanding it, was erroneous.

(2) The court below had no power to make such a decree. The extension of this sewer is purely a governmental

matter, and the appellants, in determining whether it should be made or not, would be exercising governmental functions and powers, and in these matters it cannot be directed by any court. To extend this sewer would require, 1st, the appointment of a civil engineer; 2nd, a survey of the routes; 3rd, an estimate of the cost; 4th, the advertisement for bidders; 5th, the issuing of bonds; 6th, the appointment of superintendents, etc., etc. These matters are all governmental in their nature and require the adoption of city ordinances, and the court below had no power to command the city to adopt such ordinances or to perform any act which is governmental in its character. In the exercise of their governmental functions the appelants are subject to no direction and no control by the courts. Cooley's Constitutional Limitations, 5 Ed., 255.

The Court below had no more power to require the city to extend this particular sewer than it had to require the city to sewer the town generally or to open streets or other highways for that purpose, and the decree was consequently beyond its power to make.

8. ON THE PLEADINGS.

The several assignments of error on this subject will be considered together. We think the Court below clearly erred in refusing to permit respondents to file their supplemental answer setting up the fact that the Vicksburg Water Works Company had sold all of its interest in the property and all of its rights under the contract of November 18th, 1886, and that it no longer had any interest in the subject matter of the litigation. It had been shown by the petition and the original bill in the nature of a supplemental bill, filed by the City Water Works & Light Company, that the Vicksburg Water Works Company had conveyed all of its interest to the City Water Works & Light Company, and the deed of conveyance had been filed as an exhibit to said bill; also that the City Water Works & Light Company was in

possession of the property and was operating the same, and was entitled to the hydrant rentals, etc., etc., but there was no evidence showing that there had been any conveyance by the City Water Works & Light Company back to the Vicksburg Water Works Company. It was clear, therefore, that the supplemental answer was not filed for delay, but that the city might protect its rights in the premises. We think that the Court erred in proceeding to judgment without requiring the City Water Works & Light Company to be made a party to the suit, as asked for by the appellant. The following authorities are, we think, conclusive on this point:

Equity Rule No. 57.
Bates Fed. Equity Precedure, Vol. 2, 642–647.
Hazel Tripod Boiler Co. vs. Citizens St. Ry. Co., 72 Fed. Rep., 327.
Ross vs. Ft. Wayne, 63 Fed. Rep. 466.

It will be remembered among other things the Court below decreed that the appellants should pay the hydrant rental due at the time the decree was rendered, to the appellee. The appellants had been informed in a manner about which there could be no doubt, that these hydrant rentals did not belong to the appellee, but belonged to the City Water Works & Light Company, and if the appellee, the Vicksburg Water Works Company could go on and recover these hydrant rentals, as was done in this case, what was there, or what is there now, to prevent the City Water Works & Light Company from suing for and recovering the same again? Certainly these hydrant rentals belonged to the City Water Works & Light Company only a few days before the final decree in this case, if the statements of the City Water Works & Light Company and the Vicksburg Water Works Company are to be believed; and there is absolutely no evidence that there was ever any change of ownership from the City Water Works & Light Company to the Vicksburg Water Works Company. In order to have protected the appellants against the payment of these hydrant rentals twice, if for no other

reason, the Court below ought to have permitted the filing of the amended and supplemental answer, and erred in not doing so.

We respectfully submit that the motion to affirm should be denied.

L. W. MAGRUDER.
H. C. McCABE, City Att'y of Vicksburg.
M. DABNEY.
Solicitors for Appellant.

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Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 133.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

THE VICKSRURG WATER WORKS COMPANY, APPELLEE.

BRIEF OF APPELLEE ON MOTION TO DISMISS AND AFFIRM.

S. S. HUDSON,
Of Counsel.

MISSISSIPPI PRINTING CO., V'SBURG.

IN THE SUPREME COURT OF THE UNITED STATES.

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BRIEF OF APPELLEE ON MOTION TO DISMISS AND AFFIRM.

MOTION TO DISMISS AND AFFIRM.

In the Supreme Court. October Term, 1905.

Mayor and Aldermen of the City of Vicksburg, Appellant.

vs.

The Vicksburg Water Works Company, Appellee.

Comes now Appellee by its counsel appearing in that behalf and moves the court to dismiss the appeal in the above entitled cause for want of jurisdiction or right of appeal direct from the United States Circuit Court where this appeal is taken from, because the only questions involved are questions that should be decided by the United States Circuit Court of Appeals, and the case should have been appealed to that court. Therefore this appeal should be dismissed.

2nd. Because said final decree appealed from was entered in strict accordance with the mandate of the Supreme Court of the United States dated the 7th. of April, 1902, in the case of The Vicksburg Water Works Company vs. The Mayor and Aldermen of the City of Vicksburg, 185 U. S. 65.

3rd. The case should be dismissed, because the assignment of errors, are not signed by appellant or its attorney.

4th. The case should be dismissed because the clerk's certificate on its face shows that certain exhibit is left out and therefore there is not a complete transcript of the record as required by the rules.

And said Appellee by counsel as aforesaid also moves the court to affirm said judgment or decree from which said appeal purports to have been taken because although the record may show that this court has jurisdiction of this appeal yet it is manifest that said appeal is frivolous and was taken for delay only.

HUDSON & FOX.
SMITH, HIRSH & LANDAU.
Attorneys for Motion.

STATEMENT OF THE CASE.

This motion finds its support in the fact that in 1886 appellant authorized by an act of the legislature of the State of Mississippi, to-wit, "to provide for the erection and maintenace of a system of water works to supply said city with water and to that end contract with party or parties to build and operate water works" contracted with the assignors of appellees for a period of thirty years to erect, maintain and operate a system of water works and supply appellant and its inhabitants with water for public and private use at stipulated prices fixed in said contract and that part of said contract pertinent to this controversy is as follows, to-wit:

"An ordinance to provide for a supply of water to the City of Vicksburg in Warren County, Mississippi and to its inhabitants contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said City of Vicksburg an option to purchase said works.

1st Section. Be it ordained by the Mayor and Aldermen of the City of Vicksburg that in consideration of the public benefits to be derived therefrom the exclusive right and privilege is hereby granted for the period of thirty years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns of erecting, maintaining and operating a sys-

tem of water works in accordance with the terms and provisions of this ordinance and of using the streets, alleys, public squares and all other public places within the corporate limits of the City of Vicksburg; Mississippi as they now exist or may hereafter be extended and within such other territory as may now or hereafter be under its jurisdiction for the purpose of laying pipes, mains and other conduits and erecting hydrants and other apparatus for the conducting and furnishing of an adequate supply of good, wholesome water to the City of Vicksburg, Mississippi and to its inhabitants for public and private use and for making repairs and extensions to the said system from time to time during the period in which this ordinance shall be in force.

SOURCE OF SUPPLY.—Water shall be taken from such point as may be free from all sewerage contamination and shall be good wholesome water fit for all purposes of domestic or manufacturing consumption.

SECTION 3. In consideration of the public benefit and the protection of property resulting from the construction of said system of water works the Mayor and Aldermen of the City of Vicksburg hereby rent of the said Samuel R. Bullock & Co., their associates successors and assigns, not less than eighty double nozzle frost proof fire hydrants for the aforesaid period of thirty years at the annual rate of sixty-five dollars for each hydrant, to be payable semi-annually on the fifteenth day of January and July. After the first year of operation of said water works the said city hereby rents not less than ten hydrants in addition to the said eighty for the unexpired period of said thirty years; the first one hundred hydrants shall be located on the original twelve miles of main at said annual rental of sixty-five dollars, payable as aforesaid, and for the remainder of the said period of thirty years unexpired at the time of placing each of said hydrants.

The rental of all hydrants in excess of said one hundred hydrants hereafter erected on the line of distributing mains or the extension thereof as hereinafter provided at the request of the said Mayor and Aldermen of the City of Vicksburg shall be at the annual rate of fifty dollars for each hydrant payable as aforesaid during the unexpired period of said original term of thirty years. The water shall be used from said hydrants for the extinguishment of fires and necessary fire practice and for flushing sewers and gutters only, provided that for fire practice and flushing sewers no more than two hydrants shall be open at one time and not more than once in each week.

SECTION 4. Water shall be furnished free of charge to the public schools and to all other public buildings used exclusively for city purposes and for filling public cisterns and the City Hospital shall also be supplied with water free by a supply pipe whenever the mains shall be laid to within seven hundred and fifty feet of said hospital. Water shall be supplied free for six drinking fountains with openings for man and beast and one public fountain to be erected by the said Samuel R. Bullock & Co. in such place on the line of mains as the Board of Mayor and Aldermen of the City of Vicksburg may direct.

SECTION 6. Upon the completion of the construction of said system of water works the said Samuel R. Bullock & Company, their associates, successors and assigns shall notify the Mayor and Aldermen of the City of Vicksburg to that effect in writing and thereupon submit the works to such test as will show the capacity of the work to be sufficient to throw five fire streams through one hundred feet of 2½ inch hose and one inch nozzle and from four different hydrants, a stream not less than fifty feet high at the highest elevation on which any of such hydrants are located. On the satisfactory performance of this test the said Board of Mayor and Aldermen shall formally accept said system if constructed in accordance with the terms of this ordinance.

SECTION 9. At the expiration of the period of ten years after this ordinance takes effect the Mayor and Aldermen of the City of Vicksburg shall have the right and privilege to purchase said system of water works provided they notify the Samuel R. Bullock & Company, their associates, successors or assigns of their intention to do so at least one year before the expiration of said period of ten years.

The value of the said system shall be ascertained as follows: The said Samuel R. Bullock & Company, their associates, successors or assigns and the Board of Mayor and Aldermen of the City of Vicksburg shall severally appoint one person, the two appointees shall choose a third and the three persons thus chosen, who shall be hydraulic engineers, shall constitute a board to determine the value of the said system of water works. None of the Board shall be residents of said Warren County. The said Mayor and Aldermen of the City of Vicksburg shall within sixty days after the said Board has rendered its decision pay the amount awarded in cash. A failure to so pay the award or give notice of intention to purchase as above provided, shall operate as a waiver of the right to purchase until the next succeeding period of ten years.

SECTION 11. After the works are put in operation if at any time the pressure gauges located at the points hereinbefore named shall indicate a pressure of less than twenty pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession, then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided, however, if the pressure indicated as aforesaid shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Company and their associates, successors and assigns acquired by virtue of this ordinance shall at the option of said Board of Mayor and Aldermen made in writing, cease and determine and be null and void, but nothing contained herein shall be so construed as to prevent the said Samuel R. Bullock & Co., their associates, successors and assigns, from temporarily shutting off the water from its said system or in operation thereof for the purpose of making repairs or extensions to the same and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors or assigns for the suspension of the supply of water provided the repairs are made and the water turned on again without unneccessary delay, but the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom.

SECTION 12. Be it further ordained that as a part of the consideration for the performance of the duties and obligations hereby imposed on the said Bullock & Company, their associates, successors and assigns, the said water works and the property and business pertaining thereto and employed in and about said system shall be exempt from all municipal taxation during the first five years of their operation and all of the property and business pertaining to and employed in and about said system of water works shall hereafter during each year of the balance of the period of this contract be assessed for taxation by said city at a valuation not to exceed the sum of fifty thousand dollars.

SECTION 13. Said Samuel R. Bullock & Company, their associates, successors or assigns shall have the right to make all needful rules and regulations governing the consumption of water, the tapping of pipes and the general operation of the work and to make such rates and charges for the use of said water as they may determine, provided that said rates and charges shall not exceed fifty cents for each thousand gallons of water.

In August 1900 Appellee through a sale under a mortgage executed by Appellees predecessor, became the owner of the works and contract and ordinance made with the city. The city after receiving the benefits under said contract for a period of thirteen years without question or complaint on the 7th. of November, 1900, in council by resolution denied liability under the contract, declined to pay the price fixed by the contract and offered in lieu a reduced compensation for the use of water, to wit.

"At a regular meeting of the Mayor and Aldermen of the City of Vicksburg, Mississippi, held on the 7th. day of November, 1900 amongst other proceedings had at said meeting was the following to-wit: "Resolved, that the Mayor be and is hereby instructed to notify The Vicksburg Water Works Company that the Mayor and Aldermen deny any liability upon any contract for the use of water hydrants. That from and after August, 1900 they will pay reasonable compensation for the use of said hydrants. That the City Attorney take such action as shall be necessary to determine the rights of the city in the premises.

H. J. TROWBRIDGE, City Clerk."

See Record p. 30.

On the 18th. of March 1900 the legislature of Mississippi passed an act to authorize the Appellant to issue bonds in the sum of three hundred and seventy-five thousand dollars to purchase or construct, equip and maintain a water works system in the City of Vicksburg and for other purposes and the Appellant held an election under said act as directed by it on the 3rd. of July 1900 which election resulted in a vote to build or buy a water works plant of its own.

On February, 1901 Appellee repudiated in toto and asserted that no contractual relations existed between the parties hereto and declined to recognize the Appellee.

On the commission of these several acts Appellee filed its bill in the United States Circuit Court of Mississippi asserting jurisdiction in that tribunal mainly because appellant in passing the resolution of the 7th. of November, 1900 and February, 1901, and in holding an election to issue bonds to build or buy a water works plant of its own violated Article 1, Section 10 of the Constitution of the United States in this, that "no state shall * * * pass any law impairing the obligation of a contract."

The city demurred to the Bill of the company for the following reasons:

(1st.) Because said court was without jurisdiction of said suit because the acts complained of by the company committed by the said city are not such acts as are in contravention of the company's contract rights, nor does it require the construction of the Constitution and laws of the United States.

(3rd.) Because the city did not have the power to make an exclusive contract for the period of thirty years, and it was beyond their power to bind the constituted authorities for that length of time.

(4th.) Because by the terms of said contract it was not assignable but personal to appellee's assignor.

(5th.) Because by the charter of said city it is without the power of said city to make any contract with that of another where the value of the same exceeded five hundred dollars without first advertising for bids as required by said charter.

On filing said demurrer the defendant also filed an answer denying the fact. Hearing the complaint upon the pleadings as set out, the trial judge dismissed the bill because he did not think that the city had committed any act violative of Article 1, Section 10 of the Constitution of the United States either on account of the passage of the resolution of the 7th. of November, 1900 or by holding an election under the acts of 1900 to build or buy water works of its own.

From this adverse holding the water company obtained the certificate of the court and appealed direct to the Supreme Court of the United States. That court in an exhaustive opinion rendered the 7th. of April, 1902, Vol. 185, p 65, reversed and required the trial judge to retain the bill, and to proceed with the cause in accordance with the mandate of that Court. Testimony was taken pro and con and the able Circuit Judge at Jackson, Mississippi, in court on the 18th. day of May, 1904 upon argument upon the law and merits of the case decreed for the appellee in strict accordance with the mandate of the Supreme Court.

From this final decree the city sues out this appeal to this court and assigns as its legal reasons for so doing the following assignment of error.

ASSIGNMENT OF ERRORS.

Vicksburg Water Works Company, Complainant,

vs.

The Mayor and Aldermen of the City of Vicksburg, Respondent.

Now comes the respondent and files the following assignment of errors upon which it will rely:

1st. That the United States Circuit Judge erred in allowing the said Water Works & Light Company to withdraw its petition filed in said cause on December 2nd., 1903 whereby it prays to be admitted as a party complainant and also in allowing the said City Water Works & Light Company to withdraw its original bill in the nature of supplemental bill filed in said cause on the ——— day of May, 1904, and the said court erred in allowing the Complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill authorizing the withdrawal of said several papers being in words and figures as follows, to-wit:

This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2nd. 1903 and its original bill in the nature of a suupplemental bill filed the 8th. of May, 1904 with all exhibits and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent to the filing of said bill, and the court being fully advised in the premises doth hereby order, adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

2nd. The court erred in refusing to allow respondent to file a supplemental answer setting up that the said City Water Works & Light Company was an essential party complainant and that unless it should be made a party complainant the court could not proceed but must dismiss the bill.

3rd. The court erred in refusing to continue said cause on the motion of respondent after he had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill whereby it sought to be named a party complainant in said

cause and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

4th. The court erred in granting the complainant's motion to strike from the evidence interrogatories number 135-136 137-138-139-140-141-142-143-147 propounded to witness M. O. Crumpler and the answers thereto and the said interrogatories and answers being as follows, to-wit:

Cross Int. 135. Mr. Crumpler what has become of the corporation heretofore existing and known as the Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not; it has simply sold out what property it had to the City Water Works & Light Company.

Cross Int. 136. It has no property of any kind whatever?

Ans. No sir.

Cross Int. 137. What business is it now engaged in carrying on?

Nothing.

Cross Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903.

Cross Int. 139. What corporate act or acts, if any has it done since the 1st. of December, 1903.

Ans. I don't know of any except in winding up its business.

Cross Int. 140. If it has no property and is carrying on no business what further business has it to wind up?

Ans. It is winding up the accounts that belong to the company.

Cross Int. 141. It does then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

Cross Int. No. 142. Then when you said that it had no property you meant that it had no tangible property. I mean that it had no water works or anything of that kind.

Ans. Yes, sir.

Cross Int. 147. You are the manager of the new com-

pany, The City Waterworks and Light Company the same as you were the manager of the old company; The Vicksburg Waterworks Company are you not?

Ans. Yes, sir.

5th. The said court erred in rendering final decree against Respondent because said decree is contrary to the law and the facts as stated in the pleadings and proof before said court.

6th. Said court erred in perpetuating by its final decree the injunction against Respondent restraining it from building a water works plant of its own.

7th. The court erred in granting a mandatory injunction against Respondent commanding Respondent within one year to build and construct a sewer whereby the sewer now existing on Washington street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi River south of the intake of Complainant.

In order that the foregoing assignment of errors may appear of record Respondent presents the same to the court and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided, and that upon hearing the said final decree may be reversed and said cause remanded, all of which is respectfully submitted.

Solicitors for Respondent.

The manifest office of the motion to affirm or dismiss if I intelligently conceive the dictum of the court upon the subject, is to prevent and discountenance the arbitrary exercise of the right of appeal and loading up the court docket with foregone affirmances that "a wayfaring man though he be" could understand that that there is no merit in the appeal, but that it is done to prolong the fatal crisis as well as delay the vital and beneficial result to the Appellee, inflicting upon it pecuniary injury, depriving it of the use of its money or property by such suspensatory and dilitory pretext, with no regard for the taxation they impose upon the court and the judges in the time they consume in the consideration of such *frivolous* appeals,

thereby defeating the very victory and benefits Appellee had derived from the decree. It is for these reasons that I understand that the court notifies the Appellee to command its attention to the perpetration of a motion to dismiss or affirm for such abuses exercised under the right of appeal. Conceiving this to be the righteous mission of this beneficient motion I confine myself to a pertinent discussion of its merits here.

FIRST AND PARAMOUNT, that no appeal is authorized by law direct to the Supreme Court from the District or Circuit Courts in this case.

The Act of March 3rd, 1891 lays down the following grounds upon which appeal can be taken direct to the Supreme Court from a Circuit or District Court.

SEC. 5. "In any case in which the jurisdiction of the court is in issue: in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

"From the final sentences and decrees in prize causes."

"In cases of conviction of a capital crime."

"In any case that invokes the construction or application of the Constitution of the United States."

"In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question."

"In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

We submit that no reasonable construction can be placed upon this statute that will warrant an appeal direct to the Supreme Court from the Circuit Court in the attitude that this case was, when this appeal was taken. And if not, the case should be dismissed on this motion.

We submit further, that all the laws and Acts both State and municipal involved in this case that would warrant an appeal direct to the Supreme Court from the Circuit Court for adjudication, as to whether they were in contravention of the laws and constitution of the United States *have already been decided* in this identical case by this court.

Vicksburg Water Works Co., vs. Mayor and Aldermen of Vicksburg, 185 U. S. 65.

The court held: after citing the facts in the case: "It cannot be seriously contended that, under the Act of March 18, 1886, authorizing the City to provide for the erection and maintenance of a system of water works, and to contract with a party or parties to build and operate water works, and under the ordinance of the City of November 18, 1886 providing for a supply of water to the City and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the City to make; the terms were explicitly set forth in the Ordinance; the works erected were appoved by the City, and the respective obligations created by the contract were duly complied with, without question or complaint, for a period of fourteen years."

"After the lapse of that long period and the continuous acquiesence of the city in the contract as a valid and subsisting one, the city according to the allegations of the bill, now insists that the said contract was invalid because in excess of its powers to contract, and is proposing to borrow money to erect and maintain water works of its own, and become a competitor with the complainant for the custom of the consumers of water. And the question for our consideration is whether the subsequent legislation, State and municipal, set forth in the bill, impairs the contract rights of the complainant within the protection of the Constitution of the United States."

The court then further held: "That the ordinance of the City of November 7, 1900, whereby the Mayor was instructed to notify the Water Works Company that the Mayor and Aldermen deny any liability upon any contract for the use of the water works hydrants, and the subsequent action of the City in holding an election to authorize the issue of bonds to buy or construct water works of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, do not present the mere case of a breach of a private contract to be

remedied by action at law, but disclose an intention and attempt, by subsequent legislation of the City, to deprive the complainant of its rights under an existing contract; and that, therefore, unless the City can point to some inherent want of legal validity in the contract, or to some such disregard by the Water Works Company of its obligations under the contract as to warrant the City in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a federal question."

Thus it will be seen that all the questions involved in this case, in which an appeal can be taken to this court direct from the Circuit Court, have already been decided by this court; therefore no further appeal lies direct to this court from the Circuit Court. We submit, that the *only* appeal appellant had from the final decree on its merits in the Circuit Court in this case, was to the Circuit Court of Appeals. Certainly there is no law authorizing *this* appeal in the attitude this case is in; and we respectfully submit that the case should be dismissed for want of jurisdiction; or the right of appeal direct from the Circuit Court.

2nd. Appellee insist that the case should be dismissed, because the clerk's certificate on its face shows there is not a complete record, wherein it excepts a certain exhibit. Rule 8, of the Supreme Court, paragraph 3, reads: "No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, deposition and other proceedings, which are necessary to the hearing in this court, shall be filed."

3rd. There is no assignment of error. Rule 35 of the Supreme Court requires the appellant to specifically set out an assignment of errors separately and particularly each error asserted and intended to be urged. The document with the caption "Assignment of Errors" is not signed by the appellant the Mayor and Aldermen or by its attorneys, therefore it is a mere piece of paper without force or effect and it cannot be considered,—hence, the case should be dismissed.

4th. If the assignment of errors has force and effect without signature of appellant, it specially shows that the

city does not set out a single ground which authorizes an appeal direct to the Supreme Court from the Circuit Court or District Court. See the following cases in support of a motion to dismiss or affirm :

Whitney vs. Cook, 99 U. S. 607.
Hinckley vs. Morton, 103 U. S. 764.
Micas vs. Williams, 104 U. S. 556.
Swope vs. Leffingwell, 105 U. S. 3.
Channte City vs. Trader, 132 U. S. 210.

And the cases cited in the case of Chanute City vs. Trader, 132 U. S. 210, and especially the court's good solid reasoning in the last case cited, on the grounds of a frivolous appeal and for delay only ; which is especially applicable to this case.

5th. Appellee insists that there is not a single assignment of error asserting that the Circuit, or District Court erred in passing upon a question which involved the construction of the Constitution and laws of the United States or a law of the state or a municipality that was in contravention of the Constitution of the United States or that any is claimed to be in contravention of the Constitution of the United States or that the jurisdiction of the court is in issue. Without these assignments, or a part of them, fully and plainly set forth, no appeal lies under the act of the 3rd. of March, 1891 direct to the Supreme Court of the United States from the Circuit or District Court. Therefore the case should be dismissed.

We submit again that the legislative acts both state and municipal, that are involved in this case have already been construed by the Supreme Court of the United States in this case, or enough of them to determine the case. The court held in delivering its opinion in the case that the ordinance of the City of the 7th. of November, 1900 whereby the Mayor was instructed to notify the Water Works Company that the Mayor and Aldermen deny any liability upon any contract for the use of water works hydrants and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct water works of its own and refusing to pay the amount due and payable under the terms of the ordi-

nance do not present the mere case of a breach of private contract to be remedied by action at law but discloses an intention and attempt by subsequent legislation of the city to deprive the complainant of its rights under the existing contract. The lower court's decree is strictly in accordance with the Supreme Court's mandate, and therefore the case should be dismissed.

If the lower court's decree is strictly in accordance with the Supreme Court's mandate a second appeal will not be sustained.

A. M. Smelting Co vs. Billings, et. al., 150 U. S., 29.
Mackall vs. Richards, 116 U. S., 45.
Stewart vs. Soloman, 97 U. S., 361.
Humphreys vs. Baker, 103 U. S., 736.
U. S. vs. N. Y. Indians, 173 U. S, 464.
Tyler vs. L. C. Mine, 97 Fed. R., 394.
In-Re Pike, 76 Fed. R., 400.
Gregory vs. Pike, 77 Fed. R., 241.

In the above cases the court says: "An appeal will not be entertained by this court from a decree entered in the circuit court or other inferior court in exact accordance with our mandate upon a previous appeal. Such a decree when entered is in effect our decree, and the appeal would be from ourselves to ourselves. If such an appeal is taken however, we will, upon the application of the appellee examine the decree entered and, if it conforms to our mandate, dismiss the case with costs."

CONCLUSIVENESS, OF PRIOR DECISION ON SECOND APPEAL.

In Illinois ex. rel. Hunt vs. Illinois C. R. Co., 184 U. S., 77, 91, the court says: "Whatever was, before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. They cannot vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided upon appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded. After mandate no rehearing will be granted * * * * And on a subsequent appeal nothing is brought up but the proceeding subsequent to the mandate."

The Supreme Court in its deliverance in the Vicksburg Water Works case making an analysis of the trouble pre-advised the lower court to the effect that if the company proved its allegations as made in the bill that its contract was within the Constitution and laws of the United States. Since that deliverance there have been no questions arising in this case that in any sense involves a further construction of the Constitution and laws of the United States.

Then if these Federal acts have been previously determined in this case these appellants must appeal to the Circuit Court of Appeals from the District Court and not to the Supreme Court of the United States, if they appeal at all. If the trial judge had overruled the city's demurrer to the bill and retained jurisdiction and put the parties to trial on the merits and on the final hearing decided the case adversely to the city then she could have appealed directly to this court.

See Walla Walla vs. Walla Walla Water Co., Vol. 172, U. S., p. 1.

The 6th assignment of error is as follows: "The said court erred in perpetuating by its final decree the injunction against respondent restraining it from erecting a water works plant of its own," this question was suggested by the Water Works Company on the first appeal to the Supreme Court of the United States in this case and this court then held that the city could not build in opposition to its contract made.

It would seem that this effort on the part of the city to continue to raise these adjudicated questions is either to insist upon this court to reverse itself or that it is still unable to comprehend the scope and effect of the opinion.

My long and continuous connection with this case has convinced me that this appeal was taken but for one purpose and that is expressed in the original bill filed four and a half years ago, which is a follows: "Your Orator further shows that the said city and its officers confederated and conspired to injure and destroy the value of its property assumed to abrogate and take away franchises and contract rights of said company while denying its (said city) liability to pay for water used by them as pro-

vided in said contract and ordinance and persistantly and unlawfully endeavored to disable said company from carrying on its business and to destroy its credit and the value of its property and to coerce said company to sell its water works to the city for an inadequate price."

In the first place the city demonstrated a spirit of oppressiveness when it by legislative act undertook to place an arbitrary price and value upon the company's property because it knew the company was forever buried in the earth and must do its master's bidding at any cost. Conceiving this to be her advantage, stripped of the magnanimity that is due from a government to its creature she importunes the legislature of Mississippi to dictatorially say to the company it shall take the price of one hundred and fifty thousand dollars or I will destroy you with my own water works. After this company had been in operation for thirteen years without question or complaint from the city, like Rip Van Winkle, she suddenly awakens from her long sleep and is imbued with the belief that the company is a robber. Why this sudden revulsion and disunion of friendship that Damon and Pythias had found in each other? It is because the city wanted the water works at its own price.

We find on page 21 of the record that L. W. Magruder, Esq., is one of the incorporators of Appellees predecessor who purchased the contract of Bullock & Company and whose company, as the bill alleges, owned and operated the contract for thirteen years, yet we find this same person leading the legal fight against Appellee's contract it purchased under the mortgage of the company Magruder and others organized and operated the contract with, and alleging in the bill filed by him for the city in the Chancery Court of Warren County as follows:

"Complainant further shows that the contract entered into with Samuel R. Bullock & Co. on the 18th day of November, 1886, is null and void and the attempt by the said Mayor and Aldermen to make such a contract was a gross abuse of their rights and powers. That the said Mayor and Aldermen had no right to make a contract for so long a time as thirty years and beyond the life of their official

term to bind the constituted authorities of said city to pay rents for the said hydrants as therein stipulated. That whatever may have been at the time a reasonable and just compensation to be paid to said Water Company for said hydrants, such payment is now excessive and unjust to charge and an extortionate burden upon the tax payers of said city. Complainant further shows that the 25th section of the charter of the City of Vicksburg which was in force at the time of making said contract, itself provided that said Mayor and Aldermen shall not make any contract involving an expenditure of corporation funds relating to work on public streets or the erection, extension or repairs of public buildings where the cost of the proposed work shall exceed five hundred dollars or for materials to be furnished exceeding two hundred dollars in value except upon advertisement duly made for sealed proposals for such work.

"Nevertheless said Mayor and Aldermen entered into said contract whereby the said terms were imposed upon said city for the period without any advertisement for sealed proposals as provided by law by reason whereof said contract was unauthorized and is illegal and void.

"Complainant further shows that by the terms of said first section the said Mayor and Aldermen attempted to grant and did grant unto the said Samuel R. Bullock & Co. the exclusive right and privilege for the period of thirty years of erecting and maintaining and operating a system of water works within the corporate limits of the City of Vicksburg for the exclusive use of the streets, alleys and public squares of the said city for that purpose and for the purpose of supplying water to the City of Vicksburg and its inhabitants for public and private use. That the said Mayor and Aldermen had no right or power to make such contract; that an exclusive grant by a municipality of the kind is in contravention of the public policy of the state and is illegal and void."

These defences are reiterated by the city in its answer filed in this court, signed by Magruder as an attorney for the city and it was unkind of him to advise the city of these glaring legal defects in the contract that he and

others had received benefits under so long. However reluctantly and involuntarily he may have furnished this information to the city, it certainly besmacks of a malicious design to make war for revenge.

Appellee calls special attention to a portion of the City's answer, on p. 70, wherein it avers:

"Your respondents admit that the averments in said bill that an Act of the Legislature was passed authorizing the City of Vicksburg to issue bonds for the purpose of constructing a City Hall and a Sewerage System and also for the purpose of either purchasing or building a water works system and authorizing the issue of one hundred and fifty thousand dollars ($150,000.00) for the latter purpose, *but respondents say the question of liability of the City to complainant by virtue of the contract entered into with Samuel R. Bullock & Co. which is raised by said resolution is altogether aside from the scheme and purpose of becoming the owners by purchase or otherwise of a system of water works, they say that said alleged contract * * * impose upon the inhabitants of Vicksburg and its corporate authorities an onerous and extortionate burden, that no such contract would now be made with the Vicksburg Water Works Co. or any other company at the rates prescribed in said ordinance, that they far exceed the average price charged for water in cities situated in like condition and circumstances to Vicksburg.*"

If these averments are true, and they are so far as they effect this case, the City does not want to become the owner of a water works system by purchase or otherwise.

Then why contend further about her right to build?

The averments are clear and distinct that the whole question of controversy is on account of the onerous and extortionate rates both upon the inhabitants and the City. What do we find in the evidence to support the "Onerous and Extortionate Rates." We defy the City to point to one word in support of it, or any effort to support it. Yet she avers most positively that, "onerous and extortionate rates" are the whole cause of this complaint. The "whole cheese" so to speak, and forgot it.

The Water Company proved its hydrant rentals, rates,

rules and regulations were reasonable. The City made no attempt to disprove it, or to put in any proof of her own on this, [the only question involved.]

The question naturally arises what is this suit about? What is the contention? One of the answers is, the City can purchase under the option in 1906 [" and has already given the Company notice she intends to do so "] and she can put these facts before the appraisors that this *great suit* was still pending before the Supreme Court with all the questions undecided.

We say therefore it is a frivolous appeal, without any merit upon the entire record and is taken for delay only. This case, we respectfully submit, should be disposed of on this motion, either by dismissal or affirmance under such facts and proof as appears in this record.

Passing from this epoch in the history of this case we reach the evidence in the case and turning to the declarations made to the company by Mr. Kelly and Mr. Smith and others who were at the time aldermen of the city, they and all aldermen whose public integrity has to become so depraved as to openly assert "that the city wanted to get the plant for one hundred and fifty thousand dollars and that the city council intended to do everything in their power to harass and annoy the company so as to make it sell at that price and that the company might expect the council to do everything they could to break the contract. Alderman Smith told the company that the city would never buy the plant under the option of the contract because they would not pay as much for it as they would have to pay for it that way.

Alderman Campbell stated in open session at the city council that he was opposed to building a sewerage system in the city for the reason that it would *enhance* the value of the water works plant.

Also the questions asked Mr. Crumpler by the City Attorney, Record page 290, Int. 235. "Then the fact that the City had not up to this day, done any act or passed any resolution showing that it had made an election as to whether it would buy or build under the

said law, so far as you know, may have been for the purpose of buying the water works as *cheap as possible?*
Ans. Yes sir.

As a matter of fact, don't you think all the acts done by the City might be explained in that way—that the City desired to purchase at the lowest possible price."

Ans. *That might have been their intention, but I think if it was, it was a very unjust one, to repudiate a contract to get another man's property cheaper than its value."*

See Record p. 266.

Well might our forefathers who gave us the Federal Constitution to protect rights looking down the ages of time see just such barbaric greed emanating from such oppressors as Kelly, Campbell and Smith and well did they shelter the oppressed otherwise like unto King Charles, "Thy will is law," but no longer can autocratic power live in the face of this palladium of liberty whenever the purposes to deprive one of his own without right and by might this great Federal Sampson intervenes and like the father of us all places its hand upon the erring child's ways and forbids further transgression. Surely these aldermen in their conduct represented the controlling political wishes of the city and were governed by its popular feeling. The most striking feature in my judgment of this unprovoked assault is the despisable and cunning method by which the city was to absolve itself from the contract.

Section Eleven of the contract is as follows: "After the works are put in operation if at any time the pressure gauge located at the points hereinbefore named shall indicate a pressure of less than twenty pounds on the distributing main at the highest point of elevation for the period of two weeks (2) in succession then the the rental for the use and employment of the hydrants for the purpose aforesaid shall cease until the standard of pressure in this section provided shall be attained. **Provided, however, if the pressure indicated as aforesaid shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of Samuel R. Bullock & Company, their associates, successors and assigns acquired by virtue of this ordi-**

nance shall at the option of said Board of Mayor and Aldermen made in writing cease, determine and be null and void."

With this section in view the city provided itself with a recording gauge to keep the daily pressure of the water and located it in one of the public fire engine houses. Just beneath the gauge is a stop cock located in the pipe to adjust the pressure of the water against it in order that the guage might keep a false record of the pressure. The city through its servants so arranged the stop cock as to prevent a free and full passage of the water to the guage and this practice was continued until they were detected and required to keep an honest register. The evident purpose of this act was that if they could, without detection keep a paper record of the gauge of this water for two months showing that it was below the minimum pressure for that time that as a matter of fact would absolve them from the contract. See answer and interrogatory 18, M. O. Crumpler's deposition, page 265 of Record. Also see the Company's notice to the Board of Mayor and Aldermen advising them of the fact of the false register of the pressure of the water at this gauge, Record, p. 302.

Just succeeding this testimony we find that being forestalled in obtaining the relief from the contract through the gauge, the fire chief of the city, appeared as the Iago of this drama and Poseidon like casts his trydent upon the ground and thereby systematically sets about to minimize the water pressure whenever there was a fire by failing to pull open the hydrants so that a full pressure might be obtained and so that it, the fire, might do its ravages and destroy the property and thereby arouse this embittered feeling of the citizens to action and do violence to the personal management of the company and forcibly dispossess him. Fortunately the insurance companies who were the losers took a secret hand in the detection of this wholesale destruction of property by fire and after mature investigation determined that it was not the lack of pressure of water but was a deliberate design on the part of the Chief to destroy the work, consequently by the demand of the united effort of the Insurance Companies

doing business in the city he was dismissed as Chief of the Fire Department and not permitted in any sense to be connected with the department. To do this, in the language of Milton, one would steal the livery of Heaven to serve the devil in hell. These facts and acts are recited not for the purpose of proving the guilt of the city but to show that one who will resort to such methods to effect absolution from a binding and valid contract *will take a frivolous appeal for delay.*

Appellee calls special attention to the fact that the charts which shows the pressure carried by the Water Company for over fourteen years, shows beyond question that the pressure was never below the required pressure for a period of two weeks, while under the contract it could have been two months before forfeiture of the contract. The charts are before the court and we defy the city to show to the contrary.

It will be noticed that the city in its answer at page 7 says that before the question of building a sewerage system and water works can be obtained by them they deem that it is proper that there should be settled their liability if any under said contract. They consider that it is their duty as public servants to test such question not only because of the onerous terms of said contract but also because the public welfare requires that said question be settled for they might justly conclude that it would be unwise to build a system of water works in case it should be decided that they are bound by said contract though they may have the legal right to build. Record page 72.

Also at page 69 and 70 we find the city making the following allegation: These Respondents deny that the water which has been furnished by the said Water Works Company since they acquired the ownership thereof has been "**good wholesome water** fit for all purposes of domestic or manufacturing purposes."

"On the other hand they aver that said water has for the most part been charged with mud, sediment and other deleterious matter injurious to the health of the people who use the same and unfit for domestic use. They deny that the Vicksburg Water Works Company has kept and

maintained a pressure against its mains to the extent stipulated and required in said contract with Samuel R. Bullock & Compauy. That for the failure of said company to comply with said contract in respect to the quality of water to be furnished and in respect to the pressure required to be maintained upon said mains these Respondents say that the Complainant is not entitled to any relief by virtue of its terms and that these Respondents are released from its obligation."

Further on the city says: "also said contract imposes upon the inhabitants of Vicksburg and its corporate authorities an onerous and extortionate burden, that no such contract would now be made with the Vicksburg Water Works Company or any other company at the rates prescribed in said ordinance and that they far exceed the average price paid for water in cities situated in like condition and circumstances to Vicksburg."

From the tone of this defense by the city it would seem that the city would be anxious to determine this controversy for the health, welfare and pocket book and finances of the city as she alleges, but on the contrary some very dilitory methods have been employed to defeat the final determination of the case. For instance, this case was decided and a final decree rendered by the trial judge on the 18th day of May, 1904. See Record p. 365. There was ample time to have appealed the case and docketed it for the October term 1904 of this court, but arbitrarily claiming the time allowed by the statute within which to take an appeal from final decrees, none was asked for until the 9th day of November, 1904. See petition for Appeal Record p. 369, thereby permitting the October term 1904 of this court to pass without perfecting the appeal. This tactful method created twelve months delay and the case cannot be docketed now for action until the October term 1905, and as they possibly thought in making this move and appealing directly to this court the city realized that this court was more than a year behind and that this case could not be reached on its regular call until October, 1907. In the meantime, the company must lose its bills and suffer financially in every other way, and notwithstanding the fact the com-

pany has won the case, yet by reason of the exercise of this arbitrary action on the part of the city in taking this frivolous appeal, the company must suffer as though it had lost the case and is itself appealing. The authorities of this court sustaining this view are:

Mecas v. Williams, Vol. 104, U. S. Reports, p. 556.
Swoop v. Leffingwell et al., 105 U. S. p. 3.
City of Chounte v. Troder, 132 U. S. p. 210.

There are some other legal questions involved in this appeal as presented by the assignment of errors but they are no more than ordinary legal questions and are not such as that this appellant may be permitted to avoid the United States Circuit Court of Appeals and seek relief here in the first instance; for instance, it was especially agreed by counsel on both sides and upon said agreement it was ordered by the court on January, 1904, that the case should be tried as it then stood on final hearing in May, 1904, at Jackson, Mississippi, although the city had notice of the assignment on December, 1903, Record p. 110.

See agreement and Court's order, Record p. 109.

Besides it was in the discretion of the court at that stage of the case not to allow the supplemental answer filed and granting further time to take testimony. See Rule 60 Equity, and cases cited.

RATES, RULES AND REGULATIONS.

"These subjects are fixed by contract and cannot now be disturbed, but considering that they could be, the undisputed testimony shows that they are reasonable and not in contravention of the contract or law." Los Angeles vs. Los Angeles Water Company, 177 U. S. page 558.

POLLUTION OF THE WATER BY THE CITY.

The court in perpetuating the injunction in this case is asked to restrain the city from using the underground gutter or storm sewer on Washington Street, of the defendant as a sewer for excremental matter from private residences, hotels, business houses, etc., in order that this contract may be performed. At the time the water works pumping station was located, the gutter or

sewer was used to carry off surface water from Washington Street and the streets crossing Washington Street in time of hard rains, and prevent it from flooding the stores on the West side of Washington Street. This sewer emptied into Lake Centennial. The contract between the city and the water company provides that the source of water supply shall be at a point free from sewerage contamination. When the pumping station was located it was at a point free from contamination by sewerage. Subsequent to the location of the pumping station and beginning of the operation of the works, the city council permitted stores and hotels along Washington Street to connect with this storm sewer and use it for the disposition of excremental and other sewerage matter, and the use of it for this purpose has assumed such proportions as to be dangerous to the health of the community, and the court should restrain the city from allowing the further use of this gutter for such purposes. I find several parallel cases, three of which I will refer to.

First: Platt Bros. & Co., vs. City of Waterbury, 721 Conn. 531, 48 L. R. A. 691. The facts are these: The plaintiffs owned and operated a mill by water power on the Naugatuck River below the city of Waterbury. When the city had grown to proportions as to require sewerage, its inhabitants constructed a system under an act of the Legislature which authorized the outlet at a point in the Naugatuck River above plaintiffs. On account of the increased growth of the city the sewerage discharge became so great as not only to destroy the primary use of the water, but to prevent as well, plaintiff's from using it at their mill for manufacturing purposes. The plaintiff's brought suit for the damages sustained and asked for an injunction restraining the city from using the river for such purposes. The court awarded damages to plaintiffs and perpetually enjoined the city from polluting the water and held further that the city, although acting under the author-

ity of the legislative grant and in the exercise of a governmental function, could not escape liability where it had damaged a riparian owner; that it was beyond the power of the legislature to authorize a nuisance and perpetrate such monstrous injustice. The court held further that such an act was unconstitutional, because no one's property can be taken by legislative grant or otherwise for public purposes until just compensation can be made.

In the case of Dwight vs. Hayes, 150, 111, 273, 37 N. E. 218, the court held: "Equity will enjoin the pollution of a stream by the discharge of city sewerage therein rendering the water unfit for domestic use, or for the drinking of domestic animals."

In the case of Roff vs. Lagrange, 158, 111, 21, 42 N. E. 77, the court held;

A municipal corporation cannot empty its sewerage into a stream of water where the result is the pollution of the stream, and a bill in equity to restrain the nuisance will lie in behalf of any person injured.

These cases only reiterate the sustained contention of complainant since the damage began.

Why should the city in the instant case be permitted to destroy this water works system, and in addition compel it to respond in damages for injuries sustained on account of the pollution of the water and forcing it to construct costly preventives and operate them at great expense in order to protect the health and lives of the inhabitants of the city.

Mr. Justice Shiras in speaking of equity jurisdiction in cases of threatened injury says:

"We cannot accede to this contention (that no steps have been taken to injure complainant, and injunction cannot be granted.) It is often made in cases where bills in equity are filed to prevent anticipated and threatened injury, where the damages would be insufficient or irreparable. But it is one of the most valuable features of equity jurisdiction, to anticipate

and prevent a threatened injury. The exercise of such jurisdiction is for the benefit of both parties.

It is evident to the court's mind that a sewer of such great dimensions carrying off the sewage of the most populous part of a growing city, is a great detriment to the health and lives of all the people using the water contaminated by such sewage—in this case nearly eighteen thousand people; and the operation of it should be suppressed without reference to who is to blame for its operation. Complainant addressed a petition to the defendant four years ago, asking that this use of the storm sewer be discontinued. The testimony and this petition show the sluggard disinclination of the defendant to remedy this state of affairs and a total disregard for the public welfare, and show the importance of some action by this court. In numerous cases on this question the substance is, "the power of the courts extends to the protection of the lives, health and comfort of all persons, and the protection of all property in the state; and persons and property are subject to such restraint as will secure the general comfort, health and prosperity."

Wholesomeness of Water.

There are some allegations in defendant's pleadings regarding the character of water furnished by this complainant. The character of water delivered to the public fire hydrants for fire purposes may be muddy and unwholesome and yet be sufficient to put out fires. In the State Trust Company of New York vs. Duluth, 73 N. W. 249, the court says:

"If the water that the company furnished the city through their fire hydrants, was a proper supply of water for fire protection purposes, the fact that the company failed to furnish water fit for domestic purposes would be no defense to an action against the city to recover the rentals for fire hydrants.

Manifestly this should be the law in such cases, be-

cause the wholesomeness or unwholesomeness of the water does not disqualify it for the use for which it was intended and is being used by the city. Whether it is wholesome or not is important.

In the case of Commonwealth vs. Towanda Waterworks, 15 Atl. Rep. 440, the court in determining the meaning of the word "Wholesome" as applied to water, says:

"If the term "pure water" as found in the Act of 1874, is to be taken in the absolute sense, then is that Act absurd and useless; for we all know that the only possible way to obtain pure water is by distillation. Water is an absolvent and a solvent, so that it can neither pass over the earth nor pass through the atmosphere without contracting impurity. How, then, could the Towanda Waterworks Company deliver "pure water" to the inhabitants of Towanda, when such was not to be found in the Heavens above, nor in the earth beneath? But even comparatively pure water is hard to be obtained in large quantities, for in populous sections of the country, where waterworks are mostly needed, neither rivers or smaller streams can be kept entirely clear of sewerage. Melting snow contaminates them, and rains fill them with mud. The very mountain streams are not free from pollution, nor even the springs that flow from the rocks. These are matters of common observation, and we do not need experts to inform us of them. If we are not to utterly frustrate the acts of the assembly, we must construe the words "pure water" to mean wholesome, ordinarily pure. We must use as it is used by the world at large, and not in the abstract or chemical sense. It is only in this manner that we can reach the legislative intent, and make the act economically valuable. Under the rule—the rule of sound common sense—we can entertain no doubt of the rectitude of the judgment of the court below. The judgment is affirmed."

Defendant rhetorically alleges that the water was

so charged with mud that it was unfit for use and not "good wholsome water for all purposes of domestic and manufacturing consumption" as contracted for. Looking to the context of the whole contract, we find first; that the water to be delivered must be taken from a point free from sewerage contamination. It could not have referred to an Artesian well, for that could not have a point in the sense in which the word is used here, nor could it be affected with sewerage contamination. Continuing, we find that the contract was printed originally, and it read "good, wholesome, clear water"; but before the contract was executed the word "clear" was stricken out with a pen and ink. The Mississippi River is always muddy and never clear; and at the time of executing this contract there was none of the modern methods of filtering water on a large scale: Thus it is clearly demonstrated that the Mississippi River was the only source of supply in contemplation when the contract was made.

Admiting, however, that the water is discolored, does that fact effect its wholsomeness, whether it is filtered or unfiltered.

All the witnesses who testify on this subject repudiate and disprove such contention. Who are these witnesses:

First: J. M. A. Brennan, one of our best citizens, who has resided here all his life, and who had used filtered and unfiltered water at his home for drinking purposes since the installation of the water works plant. He says that it is good wholesome water, and health of Vicksburg compares favorably with any city.

Second: E. S. Butts, the most prominent banker in Vicksburg, and who is more thoroughly identified with its interest and material prosperity than any other man in the city. He tells you that the water is wholesome and that the city enjoys as good health now, as it did before the installation of the waterworks plant.

Third: D. H. Herman, who has lived in Vicksburg

fifty years, congratulates Vicksburg on its wholesome water now, and thinks it is superior to any.

Fourth: Charles Linstrom, the Master Mechanic of the Yazoo & Mississippi Valley Railroad Company, with an average of four hundred men under his supervision, says that the water is not only good for making steam, but that it is good for drinking water. Surely, if the water was otherwise, one with such an army of men under him would by this time have discovered any delecterious effect it might have upon the stomach, and would have discarded it as unwholesome, because such a business could not afford to use water dangerous to health.

Fifth: F. Streuby manager of Lever Bros. Oil Mills, and a resident of Vicksburg for many years. Necessarily the superintendent of such a plant means a varied practical experience with waterworks for both domestic and manufacturing purposes, and when such staunch business characters as Mr. Streuby and the preceding witnesses testify to the wholesomeness of the water, it means that the water is wholesome and good.

Sixth: J. Voewinkel, who has been chief of the fire department of Vicksburg for many years, and necessarily associated with the water company, tells the court that from actual experience with this water from the installation of the plant, he knows that it is good and wholesome. He has used it for manufacturing purposes and has drank the water from the hydrants without any filteration, and he prefers it that way. He has cistern water, but he knows that the river water is more wholesome.

The seventh witness as to the wholesomeness of the water is Dr. H. H. Haralson, with as large and as varied practice as any physician in Vicksburg, and one who has lived in different parts of the State and had wide experience with diseases conveyed by drinking water, tells the court that in all cases where patients have been afflicted with diseases conveyed by drinking water, they have used cistern water. He says that in over fifty

cases of typhoid fever treated by him in Vicksburg, not one of his patients used waterworks exclusively, and the majority of them used cistern water exclusively. Could evidence be stronger? He says that the unfiltered water, as he knows from actual experience in the practice of his profession, was as welcome as the filtered water.

Eighth: Prof. Metz, the highest authority of the United States obtainable upon the possibility of water, tells us that the unfiltered water of the Mississippi River at Vicksburg is wholesome and especially so, after it has been settled in the settling basins of the complainant; and he proves it by the highest and most unexceptionable standard of analysis. There being no evidence to the contrary offered by the other side. The evidence of these men must be taken as conclusive.

Appellee calls special attention to the fact, that the City laid great stress on the *unwholesomeness* of the water. The Water Company took exhaustive proof on the wholesomeness of the water and proved that it was furnishing good wholesome water by experts and a great number of the best citizens as just enumerated above.

The City asked *ONE* of its witnesses if he knew whether or not the Water Company was furnishing good wholesome water. His answer was that he could not say whether it was or not. This witness was the Mayor—W. L. Trowbridge, one of the most persistent fighters against the Water Company.

Upon such proof as this, upon one of the most vital points in issue, together with the "onerous and extortionate rate" question heretofore referred to, without a single word of proof on either one of them, it must occur to the Court's mind that this is a frivolous appeal and taken for delay only.

We find in the Anglo-American Provision Co. vs. Davis Provision Co., No. 2, 191 U. S. 376. On the construction of the Act of March 3, 1891, of the right to

appeal direct from the Circuit Court to the Supreme Court, is in principle, directly in point with the views we first took in this brief, that is, that no reasonable construction could be placed on the Act of March 3, 1891, authorizing an appeal to the Supreme Court, direct from the Circuit's decree on the merits of the case, without some constitutional or jurisdictional point being involved. No such questions are now involved in this case.

The assignment of errors, as before stated, do not attempt to raise a constitutional or jurisdictional point, but a question of fact, [together with minor pleadings which were in the discretion of the lower court.] The court says in the case just cited, 191 U. S. 376. "The argument for the appellant is devoted not to any constitutional or jurisdictional point, but to an attempt to upset the decision of the Circuit Court upon the question, mainly of fact.—The provisions of Section Five of the Act of 1891, were not intended to be made an instrument for such attempts." The appeal was dismissed.

We respectfully submit that the appeal in this case should likewise be dismissed.

S. S. HUDSON,
Of Counsel.

HUDSON & FOX,
Att'ys for Appellee.

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JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG,
Appellants,
vs.
VICKSBURG WATER WORKS COMPANY,
Appellee.

No. 133.

BRIEF OF APPELLEE ON MOTION TO DISMISS AND AFFIRM.

S. S. HUDSON,
MURRAY F. SMITH,
J. HIRSH,
Counsel for Appellee.

THE GUNTHORP-WARREN PRINTING CO., 116 RANDOLPH STREET, CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

NO. 133.

MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

THE VICKSBURG WATER WORKS COMPANY, APPELLEE.

BRIEF OF APPELLEE ON MOTION TO DISMISS AND AFFIRM.

MOTION TO DISMISS AND AFFIRM.

In the Supreme Court. October Term, 1905.

Mayor and Aldermen of the City of Vicksburg, Appellant,

vs.

The Vicksburg Water Works Company, Appellee.

Comes now appellee by its counsel appearing in that behalf, and moves the court to dismiss the appeal in the above entitled cause for want of jurisdiction, or right of appeal, direct from the United States Circuit Court where this appeal is taken from, because the only ques-

tions involved are questions that should be decided by the United States Circuit Court of Appeals, and the case should have been appealed to that court. This appeal should be dismissed.

1st. Because said final decree appealed from was entered in accordance with the mandate of the Supreme Court of the United States dated the 7th of April, 1902, in the case of The Vicksburg Water Works Company vs. The Mayor and Aldermen of the City of Vicksburg, 185 U. S., 65.

2nd. The case should be dismissed because the assignment of errors is not signed by appellant or its attorney.

3rd. The case should be dismissed because the clerk's certificate on its face shows that there is a certain exhibit left out and therefore there is not a complete transcript of the record as required by the rules.

And said appellee by counsel as aforesaid also moves the court to affirm said judgment or decree, from which said appeal purports to have been taken, because although the record may show that this court has jurisdiction of this appeal, yet it is manifest that said appeal was taken for delay only.

S. S. Hudson,
Murray F. Smith,
J. Hirsh,
Attorneys for Appellee.

STATEMENT OF THE CASE.

A concise, luminous and authoritative statement of the law and the facts, presented by the original and supplemental bill in this case, is contained in the opinion of this court, reported in Vol. 185, U. S., 65 *et seq.*, and we take the liberty of quoting from said statement:

"The Vicksburg Waterworks Company, a corporation of the State of Mississippi, filed, in February, 1901, in the Circuit Court of the United States for the Southern District of Mississippi, a bill of complaint against the mayor and aldermen of the City of Vicksburg, a municipal corporation of Mississippi. To this bill the city filed a demurrer and certain special pleas, and subsequently moved the court for leave to withdraw the demurrer and pleas, and for leave to file an answer alleging that said answer embodied all the matters of defense which were set forth in said pleas and demurrer, and also a motion to dissolve a temporary injunction which had been theretofore granted."

Certain orders were entered, to which this court in said statement refers, and finally, on July 3, 1901, the Circuit Court "entered the following order and decree":

"This cause coming on to be heard upon the motion to dissolve the injunction heretofore issued in this cause, and the court now being advised in the premises, and in appearing that there is no federal question involved in the controversy presented by the pleading, it is therefore ordered, adjudged and decreed that said injunction be, and the same is hereby, dissolved, and that the bill of the complainant be, and the same is hereby, dismissed, and that execution issue therefor for the cost in the case.

Subsequently, other orders were entered, and finally

an appeal was allowed to this court, and on July 4, 1901, a certificate was signed by the trial judge, which is set forth in full in said statement. This court, assuming the facts set forth, in said original and supplemental bill to be true so far as they were material to the questions involved in this cause, then stated the issues presented in the following language:

"By an act of the legislature of the State of Mississippi, approved on the 18th day of March, 1886, the City of Vicksburg was authorized 'to provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks.'

The city received competitive bids for the construction and maintenance of said waterworks, and on November 18, 1886, at a special meeting of the board of mayor and aldermen, a committee reported that the bid made by Samuel R. Bullock & Company, of New York, was the best bid, and submitted the draft of an ordinance, entitled 'An ordinance to provide for a supply of water to the City of Vicksburg, in Warren County, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and giving the City of Vicksburg an option to purchase said works.' This ordinance was then adopted."

and is set out full in said opinion. We embody herein only such portions as we regard as pertinent.

"On March 1, 1887, Samuel R. Bullock & Company assigned and transferred, under and by virtue of the fifth section of the aforesaid ordinance, all their rights and privileges acquired under the ordinance to the Vicksburg Water Supply Company, incorporated under the laws of the State of Mississippi, and the said company accepted in writing the said ordinance.

The bill further alleges the construction of the said

water plant, in accordance with the specifications contained in the ordinance, and the city accepted the same; that since the completion and acceptance of said waterworks, during a period of fourteen years up to about July, 1900, the said company fully complied with all the terms of the ordinance, and no complaint was made by the city with respect to the execution of the company's part of the contract, and the city, without question, paid to the water company the semi-annual payments stipulated for in the ordinance; that on the 8th day of August, 1900, a mortgage that the said company had previously made, and which had fallen into default, was foreclosed, and all the franchises, ordinances, contracts and property described and conveyed in said mortgage deed were sold to the Vicksburg Waterworks Company, a corporation under the laws of the State of Mississippi, doing business in the City of Vicksburg, and which became the owner of said waterworks property and entered into the operation of the same; that on October 18, 1900, the said The Vicksburg Water Supply Company executed a quitclaim deed to the said The Vicksburg Waterworks Company, conveying and assigning all rights, titles and interest it might have or might thereafter acquire in said waterworks property, franchises, ordinances and contracts; that the Vicksburg Waterworks Company gave the city notice in writing of the said purchase and assignment, with a written acceptance of the terms and provisions of the said ordinance; that since the completion and acceptance of the said waterworks the city continuously received and used the water furnished by said waterworks, during a period of about fourteen years; and said water has at all times been and now is good and wholesome for public and pricate use and adequate in supply for the needs of the city and its inhabitants; that said water so furnished from the time the city first received and accepted the same up to the present time is and has at all times been the same character and supply of water, and is and at all times has been in accordance with the said ordinance and contract entered into with said city by said S. R. Bul-

lock & Company, the said Vicksburg Water Supply Company, and the said Vicksburg Waterworks Company, and that the pressure maintained has at all times been and is now greater than required by said ordinance and contract.

Upon these allegations, the appellants claim that a contract was entered into between the city and S. R. Bullock & Company and their assigns, the Vicksburg Water Supply Company and the Vicksburg Waterworks Company, which contract still exists and is within the protection of the Constitution of the United States.

The matters and things which are alleged by the appellants to impair the obligation of said contract and to destroy their property rights are mainly as follows:

On March 9, 1900, the legislature of Mississippi passed an act entitled 'An act to authorize the mayor and aldermen of the City of Vicksburg to issue bonds to the amount of $375,000, to purchase or construct, equip and maintain, a waterworks system; construct and establish a sewerage system; to purchase grounds for, erect and equip a city hall; construct the necessary buildings for a medical college, and for other purposes;' by which act, the bill alleges, the legislature assumed to annul and abrogate the aforesaid ordinance and contract the city entered into with said Bull lock & Company and their assigns in this, that, by reason of said ordinance and contract, said city has no right within the said period of thirty years to engage in the business of supplying water to the inhabitants of said city in competition with said Bullock & Company or their assigns, notwithstanding which said act authorizes and permits said city to construct and maintain waterworks for said purpose, if unable to buy the waterworks of said Vicksburg Water Company at the arbitrary and inadequate price fixed by the said legislative act. The bill further alleges that, in pursuance of said act, and as required by its terms and conditions, an election was held in said city on the 3d day of July, 1900, at which it was voted, by a majority of the votes cast, that said city should issue its bonds in the sum

of $150,000, to buy or construct waterworks for said city; that, on the 7th day of November, 1900, the city passed a resolution and ordinance as follows: 'Resolved, that the mayor be and is hereby instructed to notify the Vicksburg Waterworks Company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants; that from and after August, 1900, they will pay reasonable compensation for the use of said hydrants; that the city attorney take such action as shall be necessary to determine the rights of the city in the premises.' The bill further alleges that on December 7, 1900, the city filed a bill in the Chancery Court of the County of Warren, State of Mississippi, against the Vicksburg Water Supply Company and the Vicksburg Waterworks Company, averring, among other things, that the contract entered into with Samuel R. Bullock & Company was null and void, and the attempt by said mayor and aldermen was a gross abuse of their rights and powers; that the said mayor and aldermen had no right to make a contract for so long a period as thirty years, and beyond their official terms to bind the constituted authorities to pay rents for the said hydrants as therein stipulated; that the rates prescribed in said contract for the use of said hydrants and the rates charged by said company against domestic consumers are exorbitant and illegal, and said board exceeded its power and authority in making a contract stipulating during the period aforesaid for said rates; that the said mayor and aldermen, at a meeting held on the 5th day of November, 1900, resolved and declared that 'the said board no longer recognized any liability, under said contract, to said company, by reason whereof said complainants say that said contract no longer exists; that they are entitled, as against the Vicksburg Water Supply Company, to have said contract canceled and annulled and as against the Vicksburg Waterworks Company to a decree that said company have never acquired any rights in or to said contract, or if mistaken in this, by reason of the matters and things stated, they are entitled to have the same annulled and

canceled; praying that the said city may have said relief and such other and further relief as may appear just and proper.'

The present bill further alleges that said suit in the chancery court was brought on petition to the Circuit Court as involving a federal question, and that the same is now pending in that court upon a motion to remand.

The bill prays for an injunction to restrain the defendant from assuming to abrogate and take away the franchises and contract rights of the complainant, and from attempting to coerce the company to sell its works to the defendant for an inadequate price, and that said act of the legislature of Mississippi, adopted on March 9, 1900, and said resolution and ordinance adopted and passed by said city on the 7th day of November, 1900, be declared to impair the obligations of said contract between said city and said Bullock & Company and their assigns, and to cast a cloud upon the title, franchises and rights of complainant, and said act, ordinance and resolution, and each of them are alleged to be in contravention of the Constitution of the United States in this, that they impair the obligations of said contract between said city and said Bullock & Company and their assigns."

This court then held:

"*It cannot be seriously contended that, under the act of March* 18, 1886, *authorizing the city to provide for the erection and maintenance of a system of waterworks, and to contract with a party or parties to build and operate waterworks, and under the ordinance of the city of November* 18, 1886, *providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; the terms were explicitly set forth in the ordinance; the works erected were approved by the city, and the respective obligations created by the contract were duly complied*

with without question or complaint, for a period of fourteen years." (Italics ours.)

This court then finally held, as stated in the syllabus:

"By the act of March 18, 1886, the City of Vicksburg was authorized to provide for the erection and maintenance of a system of waterworks and the contract made in accordance with its provisions was within the power of the city to make, and the subsequent legislation, state and municipal, set forth in the bill, impair the contract rights of the water company, within the protection of the Constitution of the United States unless the city can point to some inherent want of legal validity in the contract."

And further (page 82):

"Or to some such disregard by the waterworks company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract."

The *law of this case was then definitely settled*, and it remained only for the court below to enforce the mandate, unless the city could "point to some inherent want of legal validity in the contract," or "to some disregard by the Waterworks Company of its obligations under the contract." This court having thus considered the propositions of law presented by the bills, and definitely announced the law of the case, as far as the said bills were concerned, and conclusively settled the constitutional and jurisdictional questions, it was no longer within the power of the defendants in this case to question the law thus established, however vigorously theretofore they had denied it. It therefore simply remains now to be seen what occurred when the mandate reached the court below.

The mandate of this Honorable Court was dated the

8th day of May, 1902, and was filed in the Circuit Court May 12, 1902. (Rec., p. 98.) The answer to the original and supplemental bills was filed by the defendants by leave of court as of June 21, 1901 (Rec., p. 83), and appears on pages 63 and 78, inclusive, of the record. Depositions were taken, and on the 12th day of January, 1904, being a day of the January term, 1904, of the Circuit Court for the Southern District of Mississippi, Western Division thereof, the following motion, propounded both by the complainant and the defendants was presented to the Circuit Court for hearing:

"Motion to hear cause at Jackson, May, 1904, term next.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Western Division of the Southern District of

Mississippi.

January Term, 1904.

Vicksburg Waterworks Company
vs.
Mayor and Aldermen of the City of Vicksburg.

To the Honorable H. C. Niles, Judge of the Circuit Court of the United States in and for the Southern District of Mississippi, Western Division thereof:

Now comes the defendant and complainant by their attorneys respectively and move the court to set the above entitled cause for trial at the next May term, 1904, of the said court to be held at Jackson, Miss., on the 2nd day of the said month; and to allow both sides

until the first day of March, 1904, within which to take testimony in this case.

HUDSON & FOX
SMITH, HIRSH & LANDAU,
Attorneys for Complainant.
W. J. VOLLER and
BRYSON & DABNEY,
Solicitors for Defendant."

(Rec., 109.)

Upon this motion the following order was entered:

"CIRCUIT COURT OF THE UNITED STATES,

Southern District of Mississippi,

Western Division thereof.

Vicksburg Water Works Company
vs.
Mayor & Alderman of the City of Vicksburg.

This day this cause came on to — heard upon motion of defendant and complainant by their attorneys to set the above entitled cause for hearing at the next May term, 1904, of this court, to be held at Jackson, Mississippi, on the first Monday of the said month, and to allow both parties until the first day of March, 1904, in which to take testimony in the said cause; and by consent of both parties thereto, it is ordered and decreed that the said cause be submitted for final hearing in vacation and that the same be set for trial by this court on the first day of said May term, 1904, of this court at Jackson, Mississippi on the 2nd day of said month; and it is further ordered and decreed that both parties to the said cause be allowed until the first day of March, 1904, in which to take testimony therein.

Ordered and decreed this 12th day of January, A. D. 1904.

H. C. NILES,
Judge."

(Rec., 110.)

Testimony was taken by both parties to the suit, comprising on behalf of complainant seventeen depositions, and on the part of the defendant eight depositions, including numerous exhibits. Certain motions were made relating to amendments and a continuance, but are not material to the present inquiry and will be referred to hereafter.

Finally, at the said May term of said Circuit Court at Jackson, Mississippi, after reading all of the depositions, as shown by the record, page 365, the following final decree as amended, was rendered:

"FINAL DECREE.

Vicksburg Water Works Company
vs.
Mayor & Alderman of the City of Vicksburg, Mississippi. } Equity No. 41.

This day this cause came on to be heard in accordance with the motion of complainant and defendant, filed January 12, 1904, and the order of this court on the hearing of said motion rendered the said January 12, 1904, upon the original bill, amended and supplemental bill, exhibits, answer of defendants, proof and exhibits, and the court after hearing and attending the evidence and the arguments of counsel and being fully advised in the premises, and being satisfied that the complainant is entitled to the relief prayed for in its original and amended and supplemental bills and for full relief; it is thereupon hereby ordered, adjudged and decreed:

First. That the defendant, The Mayor & Aldermen

of the City of Vicksburg, be and is hereby perpetually enjoined from abrogating or taking away or from assuming to abrogate or take away the franchises or contract rights of complainant under and by virtue of the ordinance, franchise or contract of said defendant entitled 'An ordinance to provide for a supply of water to the City of Vicksburg in Warren County, Mississippi, and to its inhabitants, contracting with Samuel R. Bullock & Company, their associates, successors and assigns for a supply of water for public use and giving the said City of Vicksburg an option to purchase the said works, ordained the 18th day of November, 1886, approved by John W. Powell, mayor, November 19, 1886, being the ordinance contract, and franchise marked Exhibit 'B,' to the original bill of complaint, and said ordinance, contract and franchise being specifically and accurately set out in words and figures in the pleadings, which ordinance, contract and franchise was acquired by and is the sole and exclusive property of said complainant.

Second. That said ordinance, contract and franchise be and is hereby declared and held to be in all and every respect legal, valid and enforceable and binding upon said defendant, and said defendant is hereby perpetually enjoined from infringing, ignoring, rescinding or denying liability under said ordinance, contract and franchise in any of its parts or from in any manner disturbing or interfering with the rights, privileges and benefits acquired by complainant thereunder.

Third. That said defendant be and is hereby directed to rescind its resolution and ordinance adopted the 7th day of November, 1900, which is in words and figures as follows:

Resolved, 'That the mayor be and is hereby instructed to notify the Vicksburg Water Works Company that the mayor & aldermen deny any liability upon any contract for the use of the water works hydrants. That from and after August, 1900, they will pay reasonable compensation for the use of said hydrants. That the city attorney take such action as

shall be necessary to determine the rights of the city in the premises.'

And also to rescind the ordinance or resolution of said defendant adopted the 7th day of February, 1901, when the said defendant adopted the report of the committee on water works as set out in the pleadings.

Fourth. That the said defendant refrain from in any manner accepting the benefits of or proceeding under the act of the legislature of the State of Mississippi, approved March 9, 1900, and from issuing bonds under and by virtue of said act or any other act, or ordinance for the purpose of erecting water works of its own during the period prescribed in said ordinance contract and franchise.

Fifth. That the said defendant refrain from constructing water works of its own until the expiration of the period prescribed in the said ordinance contract and franchise dated 18th of November, 1886.

Sixth. That the said defendant be and is hereby required to pay all monies due or owing or that may hereafter be due or owing to said complainant under and by virtue of said ordinance, contract and franchise.

Seventh. That the said defendant be and hereby is perpetually enjoined from making or adopting any resolution or ordinance refusing to pay the contract price of water fixed by said ordinance, contract and franchise, until the expiration of the period prescribed in said ordinance, contract and franchise.

Eighth. That the said defendant be and is hereby enjoined from permitting any further connections for the conveyance of sewerage or excremental matter, with the storm sewer or culvert located on Washington street, city of Vicksburg, and the defendant is hereby directed and commanded within twelve months from this date to extend said sewer or culvert and construct an outlet therefor so as to discharge said sewerage and excremental matter into the Yazoo or Mississippi river below the intake pipe of complainant, provided that if the defendant is unable to construct or extend said sewer or culvert and construct

said outlet within twelve months from this date, it can apply to this court for good cause shown for an extension of time beyond the said period of twelve months.

Ninth. That said defendant pay the costs of this cause to be taxed. Ordered, adjudged and decreed this 18th day of May, 1904.

H. C. NILES,
Judge."

On the 9th day of November, 1904, what purports to be a petition of the defendant for an appeal was filed. (Rec., 369.) This petition does not contain the signatures of any solicitors. On the 8th day of November, 1904, what purports to be an assignment of errors was filed, but it is not signed by any solicitor, nor is it signed by the defendant. The alleged assignments of error are seven in number, printed on pages 370 to 372 of the record, both inclusive, and will be hereinafter referred to more specifically. An order dated November 9, 1904, allowing the appeal was granted by the learned judge. (Rec., 372 and 373.)

On the 28th day of November, 1904, the learned judge, upon the application of the defendant, permitted said defendant to file a copy of a lost order. (Rec., 376.)

Finally, the clerk, in attaching his certificate to the record (Rec., 377), affirmatively and specifically shows that the said record does not contain "Exhibit B" to the deposition of M. O. Crumpler filed November 20, 1902, which (he certifies) "is missing from the files and I am unable to find."

ARGUMENT.

I.

MOTION TO DISMISS FOR WANT OF JURISDICTION.

We respectfully maintain that this court is without jurisdiction to hear this appeal, and that the questions presented by the alleged assignment of errors or the record are not reviewable in this court, and if properly subjects of an appeal, they are solely within the jurisdiction of the Circuit Court of Appeals for the Fifth Circuit.

We respectfully submit that relief was invoked in this court upon the erroneous assumption that because there was at one time a constitutional question involved in this case, this court can dispose of the controversies on the merits, and the assignments of error, justify this assumption, for they present no federal question.

There are seven alleged assignments of error, *and the first four* will be considered at one time, for they are all practically an attempted violation of the settled practice of this court, as they all seek to induce this court to reverse the court below upon rulings wholly discretionary with that court. These assignments are as follows:

"I. That the United States Circuit Court erred in allowing the City Water Works & Light Company to withdraw its petition filed in said cause on December 2nd, 1903, whereby it prays to be admitted as a party complainant, and also in allowing the said City Water Works & Light Company to withdraw its original bill

in the nature of the supplemental bill filed in said cause on the ..... day of May, 1904, and the said court erred in allowing the complainant to withdraw its consent to the filing of said petition and the said original bill in the nature of a supplemental bill, the order authorizing the withdrawal of said several papers being in words and figures as follows, to wit:

'This day came on to be heard the motion of the City Water Works & Light Company to withdraw from the files its petition herein filed December 2, 1903, and its original bill in the nature of a supplemental bill filed May 5th, 1904, with all exhibits and the motion of the Vicksburg Water Works Company to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.'

"II. The court erred in refusing to allow respondent to file a supplemental answer setting up that the said City Water Works & Light Company was an essential party complainant and that unless it should be made a party complainant the court could not proceed but must dismiss the bill.

"III. The court erred in refusing to continue the said cause on motion of respondent after it had permitted the City Water Works & Light Company to withdraw its petition and its original bill in the nature of a supplemental bill whereby it sought to be named a party complainant in said cause and after it had permitted the complainant to withdraw its consent for the City Water Works & Light Company to be made a party complainant.

"IV. The court erred in granting the complainant's motion to strike from the evidence interrogatories No. 135, 136, 137, 138, 139, 140, 141, 142, 143 and 147 propounded to witness M. O. Crumpler and the answers thereto, the said interrogatories and answers being as follows, to wit:

'X. Int. 135. Mr. Crumpler, what has become of the corporation heretofore existing and known as the

Vicksburg Water Works Company, have you surrendered your franchise?

Ans. We have not. It has simply sold out what property it had to the City Water Works & Light Company.

X. Int. 136. It has now no property of any kind whatever?

Ans. No, sir.

X. Int. 137. What business is it now engaged in carrying on?

Ans. Nothing.

X. Int. 138. How long since it has been engaged in carrying on business or owned any property?

Ans. First of December, 1903?

X. Int. 139. What corporate act or acts, if any, has it done since the first of December, 1903.

Ans. I don't know of any except in winding up its business.

X. Int. 140. It has no property and is carrying on no business, what further business has it to wind up?

Ans. It is winding up the accounts that belonged to the company.

X. Int. 141. It does, then, as a matter of fact, still own some accounts and claims against people?

Ans. Yes, sir.

X. Int. 142. Then when you said that it had no property, you meant that it had no tangible property—I meant that it had no water works or anything of that kind.

X. Int. 147. But it does have claims, rights, choses in action and things of that kind unwound up?

Ans. Yes, sir.

X. Int. 147. You are the manager of the new company, the City Water Works & Light Company, the same as you were the manager of the old company, the Vicksburg Water Works Company, are you not?

Ans. Yes, sir."

(Rec., 370 and 371.)

relates to an alleged error of the court below in permitting the withdrawal of certain pleadings by the complainant, and the second to the refusal of the court to permit defendant to file certain pleadings. In other words, they are simply an attack upon the action of the court below in refusing to permit amendments to the pleadings. In *Chapman* v. *Barney*, 129 U. S., 677, this court held:

"Amendments are discretionary with the court below and are not reviewable by this court; this rule applies to an amendment substituting a new sole plaintiff for the sole original plaintiff."

In that case one of the assignments of error relied on was the following:

"The court erred in permitting a new sole plaintiff to be substituted for and in the place of the sole original plaintiff."

This court said (page 681):

"We do not think the first assignment of error well taken. Amendments are discretionary with the court below and are not reviewable by this court." Citing:

Mandeville v. *Wilson*, 5 Cranch., 15.
Sheehy v. *Mandeville*, 6 Cranch., 253.
Walden v. *Craig*, 9 Wheat., 576.
Chirac v. *Reinicker*, 11 Wheat., 280.
Wright v. *Hollingsworth*, 1 Pet., 165.
United States v. *Buford*, 3 Pet., 12.
Matheson v. *Grant*, 2 How., 263.
Ex parte Bradstreet, 7 Pet., 634.

Mr. Taylor in his work on Jurisdiction and Proceed-

ings in the United States Supreme Court, Sec. 380, p. 605 *et seq.*, says:

"Error is never assignable as to matters properly within the exercise of the discretion of the inferior court, such as are involved in questions of amendment —and the like." Citing a large number of cases.

In view of the positive language of these cases, it is difficult to understand why such an assignment of error should be pressed upon the attention of this court. If the substitution of one sole plaintiff for a sole original plaintiff was not reviewable in this court, as was announced over fifteen years ago in *Chapman* v. *Barney, supra,* how can a hearing be asked upon a proposition which denies the right to complainant to so frame his pleadings that he will continue to be until the final decree what he started out to be—a sole plaintiff?

THE SECOND ASSIGNMENT OF ERROR

relates to matters also entirely within the discretion of the court below, because it shows *on its face,* that the court refused to permit defendant to file any subsequent pleading,—in other words, refused to permit it to amend its pleading, and as the court, under the authorities cited, has a right to permit an amendment of the pleadings, it also has a right to keep the pleadings intact and prohibit amendments. These two assignments of error we submit are absolutely without merit. But in support of the action of the court below, it may be proper to call attention to what actually transpired in that court which is now the subject of criticism here, by refer-

ence to the record. We have already shown by extracts from the record that on the 12th day of January, 1904, both the complainant and the defendant joined in an application to the learned court below for permission to extend the time for taking testimony, and for an authoritative announcement on the part of the court that this long-protracted litigation would be definitely determined at a fixed day of the next term of the Circuit Court, which was to be held in Jackson in May, 1904. The court, responding to this rare act of co-operation between complainant and defendant, by a positive decree, as we have seen, extended the time for the taking or depositions as requested, and selected the said May term as the date for the final hearing of this cause. At that time the cause stood for hearing upon the original and supplemental bills, which were reviewed by this court in 185 U. S., *supra*, and the answer of the defendait theretofore filed. It is true on December 2, 1903, a petition of the City Water Works & Light Company, to be substituted as complainant in said cause in lieu of the said Vicksburg Water Works Company, was filed, but no leave of court, however, was obtained to file said petition at the time, nor at any time subsequent thereto prior to the said May term, 1904. At the said May term, after all the depositions were completed, to wit, May 2, 1904, the said City Water Works & Light Company moved the court to grant its petition filed on the second day of December, 1903, and then the said Vicksburg Water Works Company, the complainant, consented to the filing of said petition and the granting of the relief therein prayed, all of which appears in the record, pp. 110 and 111. The court, however, did not

grant permission, for the filing of said petition, said motion and said consent of the Vicksburg Water Works Company, but the defendant, on the 5th day of May, 1904, thought proper, in advance of any action on the part of the court, to respond to the said interlocutory pleading, and answered said petition as follows:

"CIRCUIT ———— OF THE UNITED STATES,

Southern District of Mississippi.

Vicksburg Water Works Company, *vs.* Mayor & Aldermen of the City of Vicksburg,	#41.	Chancery.

Now comes the defendant, The Mayor and Aldermen of the City of Vicksburg, and for answer to the petition filed herein on December 2, 1903, by the City Water Works & Light Company or to so much and such parts thereof as defendant is advised it is necessary or material for it to answer, answering says:

That it denies that the City Water Works and Light Company, a corporation under the laws of the State of South Dakota, purchased by deed or otherwise, that it now owns the property, real and personal, or any part thereof of The Vicksburg Water Works Company, complainant herein, or that the said City Water Works & Light Company purchased or now owns the choses in action and in possession or the rights, claims and demands or all the evidences of debt or in any wise appertaining to the said complainant, The Vicksburg Water Works Company, as alleged in said petition; and defendant further denies that the said City Water Works & Light Company, has any interest in the subject-matter in said suit or that it should be admitted as a party complainant in this suit.

W. J. VOLLER,
BRYSON & DABNEY,
CATCHINGS & CATCHINGS,
For Defendant."

(Rec., 111, 112.)

On the 5th day of May, 1904, the complainant filed, also without leave of court, its original bill in the nature of a suplemental bill, which appears on pages 112 to 168, inclusive, of the record.

In this attitude of the record, with an agreement of the parties deliberately entered at the January term, 1904, to extend the time of the taking of depositions to a day certain, to wit, until the 1st day of March, 1904, with a positive date fixed for the final hearing of this cause, with certain papers filed without the consent of the court, and with an express denial entered by the defendant, as late as May 5, 1905, that the City Water Works & Light Company had not purchased, and did not own the property of the Vicksburg Water Works Company, and an express denial that the said City Water Works & Light Company had any interest in this suit,—the complainant, on the 11th day of May, 1904, duly notified the defendant (Rec., 168), "that we will appear before the Honorable H. C. Niles, in the federal court room at Jackson, Mississippi, tomorrow, May 12, 1904, at nine o'clock A. M., sharp, and respectfully ask the court to hear and determine in accordance with the previous order of the court, the above entitled case (*Vicksburg Water Works Company* v. *Mayor & Aldermen of Vicksburg*), upon its merits. You are further hereby notified that we withdraw the petition of the City Water Works & Light Company filed in this cause on the 2nd day of December, 1903, and the original bill in the nature of a supplemental bill filed by the said company on the 5th day of May, 1904, and you need not answer either the said petition or the said bill. We wish to avoid all delay and procure if possible an early determination

of this controversy." Service of this notice was accepted (Rec., 168) by Messrs. Bryson & Dabney, for the defendant, on the 11th day of May, 1903 (1904), the day of its date. Having filed these papers, without the leave of court, the right of the complainant to withdraw them, we submit, was absolutely without question. They could have no force and efficacy without the sanction of the court, and could have been treated as so much waste paper. But the defendant itself, challenged the truth of the petition and in view of its attitude, and in view of its agreement to try this case finally at that time, was in no position whatever to object to such withdrawal. Yet, the complainant, desiring to conform strictly to the decree rendered at said January term, 1904, fixing a definite date for the hearing of the cause, and to take no final action without the sanction of the court, on the 13th day of May, 1904, in conjunction with the said City Water Works & Light Company, filed a motion, appearing on page 169 of the record, asking leave to withdraw from the files, the petition filed December 2, 1903, the original bill in the nature of a supplemental bill filed May 5, 1904, and the said written consent of the Vicksburg Water Works Company, and on the same day the Circuit Court made the following order:

"Vicksburg Water Works Co.
vs.
Mayor & Aldermen of the City of Vicksburg,

This day came on to be heard the motion of the City Water & Light Co. to withdraw from the files its petition herein filed December 2, 1903, and its original bill in the nature of a suplemental bill filed May 5th, 1904, and all exhibits and the motion of the Vicksburg

Water Works Co. to withdraw from the files its written consent to the filing of said bill.

And the court being fully advised in the premises doth hereby order, adjudge and decree that leave be granted as prayed for to withdraw said petition, bill, exhibits and written consent.

This May 3rd (13th), 1904.

(Rec., 170.)

H. C. NILES,
Judge."

The power of the court to grant such order is not subject to successful denial in any case; but, we submit, that it is beyond just criticism of any sort in this cause. The defendant had denied in its answer the allegations of the intervening petition, which, as we have shown, had been filed without any authority of the court, and was assuredly estopped in this state of the record, to deny the truth of its own allegations; having itself raised the issue, so far as it could, that the City Water Works & Light Company had no interest in the controversy, it could not, in the face of its formal denial, be heard to assert the contrary. Having thus maintained that the City Water Works & Light Company had no interest in the controversy, that company had the right to gracefully retire. It would be a singular proposition to maintain in any court that after a defendant has formally declared an attempted intervenor an interloper, and unequivocally denied the truth of every allegation upon the faith of which his intervention is based, still to maintain that although you are such an interloper, you have no right and standing here, that though you are unnecessarily injecting yourself into a controversy and prolonging it without right, nevertheless, you cannot *get out*, you must stay in; in other words, seeking

to eject him with both feet, and holding him back with both hands. The proper course for an interloper in such an attitude is to retire as quickly as possible. In this case the City Water Works & Light Company did just exactly what the pleading of the defendant, if true, and the defendant cannot deny its truth, required that it should do if it wished to avoid controversy—quietly withdraw from the arena of conflict. But a due regard for proprieties induced the complainant and the City Water Works and Light Company to obtain the sanction of the court to its withdrawal, and this it did. How could the court do otherwise? First, the papers were filed without leave; second, the defendant denied that the City Water Works & Light Company had any right to inject itself into the controversy; third, the parties had deliberately agreed to terminate the taking of testimony by March 1st, and try the case at the May term. Therefore, even in the absence of any authoritative adjudications which were controlling, the action of the court is *above* censure. On this same 13th day of May, 1904, the defendant appears with a supplemental answer and asks the court for leave to file the same. This supplemental answer appears in the record on pages 171 to 178. This answer if allowed to be filed would nullify the deliberate agreement of the parties entered into January, 1904, and the solemn decree of the court fixing the day of the trial, entered January 12, 1904. But even this answer, among other things, makes the following allegation (Rec., 173):

"Defendant shows that the said attempted conveyance to the said City Water Works & Light Company is null and void and that it derived no title thereto, *yet,* that complainant can invoke no relief against the same in a court of equity."

Thus exclaiming that said attempted conveyance is null and void, although seeking to use it as a defense —in other words, to blow hot and cold. Coupled with this supplemental answer was a motion of defendant "for a continuance with leave to take testimony to support the allegations in said supplemental answer." (Rec., 171.) Here was an unequivocal and emphatic declaration on the part of the defendant that not only did it desire, in this late stage of the controversy, to prolong the case by the introduction of a new pleading, but to lengthen the already protracted delay by asking further time to take testimony. Having by formal declaration, as we have shown, announced that the attempt of the City Water Works & Light Company to assert an interest in the litigation was without merit, there seems to be no occasion unless such pleading was removed from the record, which had not been done, to take further proof. So far as the record is concerned, the City Water Works & Light Company admitted the truth of the defendant's denial by removing itself from the field of contention. But there are broader grounds for the refusal of the court to protract this expensive and wearisome litigation. The original bill was filed on February 16, 1901. By a deliberate agreement in January, 1904, the parties consented to a final determination in May, 1904. Testimony was taken upon every matter of fact at issue necessary to complete the complainant's case, and the defendant took all the testimony that it thought proper upon any issue of fact it sought to raise. The case therefore was ready for trial at the said May term in accordance with said agreement and the previous order of the court. Consequently when this motion,

for continuance with leave to file the supplemental answer was presented to the court, the day it was filed, the court very promptly entered the following order:

"In the Circuit Court of the United States,

For the Western Division of the Southern

District of Mississippi.

Vicksburg Waterworks Company
vs.
Mayor & Aldermen of the City of Vicksburg.

This day came on to be heard defendant's motion this day filed for leave to file the supplemental answer attached to the said motion and for a continuance with leave to take testimony in support of the allegations of the said supplemental answer, and the court having heard the arguments of counsel and being advised in the premises it is considered that the said motion be and it is hereby overruled.

So ordered this 13th day of May, 1904.

H. C. Niles,
Judge."

(Rec., 179.)

Thereupon the court proceeded to hear this case upon the original bill, amended and supplemental bill, exhibits, answer of defendant, proof and exhibits, and on the 18th day of May, 1904, entered a final decree sustaining the bill of complaint, and judicially announced in the very first paragraph of the decree:

"This day this cause came on to be heard in accordance with the motion of complainant and defendant filed January 12, 1904, and the order of this court

on the hearing of said motion rendered the said January 12, 1904."

(Rec., 364.)

We submit that the correctness of this action is beyond cavil.

THE THIRD ASSIGNMENT OF ERROR

is based upon the refusal of the court to grant a continuance. Forty-eight years ago, "this court (in *Thompson* v. *Selden, et al.*, 20 How., 194), again decides that it rests in the sound discretion of the court below to grant or refuse a motion to continue a case; and a writ of error from such a judgment will not lie." Chief Justice Taney, speaking for the court, says (p. 198):

"And as regards the motion to continue the case, it has often been decided by this court, that the refusal of an inferior court to continue a case to another term cannot be assigned for error here."

We are aware of no case subsequent to that date maintaining a contrary doctrine.

THE FOURTH ASSIGNMENT OF ERROR

is governed by the same principles of law that we have already invoked in the discussion of the three preceding assignments of error. There was nothing in the record after the action of the court in granting the orders to which we have hereinbefore referred, relating to the City Water Works & Light Company, which made admissible or permissible any evidence referring to the said City Water Works & Light Company. Such evidence had no bearing upon any point in controversy, and being thus incompetent and irrelevant, was properly ruled out by the court upon the application of the complainant. It is too plain for argument, that the evidence must be admissible under the pleadings, and as

the City Water Works & Light Company had then no connection with this controversy, the testimony of Mr. Crumpler, objected to by complainant, which referred wholly and solely to the said company, was eliminated by the court from consideration. This action affords the appellant no ground for relief here.

THE FIFTH ASSIGNMENT OF ERROR

is as follows (Rec., 371):

"The said court erred in rendering the final decree against respondent because the said decree is contrary to the law and the facts as stated in the pleadings and proof before said court."

This announcement practically announces that the court erred in rendering the final decree, because said decree is contrary to the law and the facts, as stated in the pleadings and proved before said court. We are unable to ascertain from this assignment what special cause of complaint the appellant proposes to submit for review. If assignments of this character are permissible, the object intended to be accomplished by an assignment of error is defeated. All that it would be necessary to do, so far as the legal effect of this assignment is concerned, is simply to file a petition for an appeal. This assignment was equivalent to the request set forth in the concluding part of the assignments that said final decree may be reversed and said cause remanded. As was well said in *Lloyd* v. *Chapman*, 93 Fed. Rep., 599, the purpose of an assignment of error is "to apprise the opposite counsel and the court of the particular legal points relied upon for a reversal of the judgment of the trial court." Rule 35 expressly defines an assignment of error, and pre-

scribes it to be one "which shall set out separately and particularly each error asserted and intended to be urged." An assignment so general in its character and scope, as the one under consideration, is objectionable not only in form, but in substance. What particular facts appearing in this record does appellant rely upon to justify the allegation in this assignment, that the decree was contrary to the facts? What principle of law does it invoke that said decree violates? The assignment is useless, in the investigation of any particular principle or principles of law or propositions of fact presented in the record

"An assignment of error that the judgment below was for plaintiff, whereas it should have been for defendant, cannot be noticed."

Taylor on Jurisdiction and Proceedings, Supreme Court of the United States, p. 607.

Citing:

Stevens v. *Gladding*, 19 How., 64.

This fifth assignment being thus wholly inadequate under the rules of this court, as we construe them, does not require and further consideration from us.

The sixth assignment is as follows:

"Said court erred in perpetuating by its final decree the injunction against respondent restraining it from building a water works plant of its own."

Appellee insists that there is not a *single assignment of error*, which asserts that the Circuit Court erred in passing upon any question involving the construction of the constitution and laws of the United States, or the law of the state or a municipality in contravention of the Consitution of the United States,

or the jurisdiction of the court below. Without these assignments, either in whole or in part, no appeal lies, under the act of the 3rd of March, 1891, direct to the Supreme Court of the United States from the Circuit Court, and therefore we contend this cause should be dismissed. This court at its October Term, 1901, in this case (185 U. S. Rep., 65-81), held:

"That the ordinance of the city of November 7, 1900, whereby the mayor was instructed to notify the waterworks company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants, and the subsequent action of the city in holding an election to authorize the issue of bonds to buy or construct waterworks of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, do not present the mere case of a breach of a private contract to be remedied by an action at law, but discloses an intention and attempt, by subsequent legislation of the city, to deprive the complainant of its rights under an existing contract; and that, therefore, unless the city can point to some inherent want of legal validity in the contract, or to some such disregard by the waterworks company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a Federal question."

This enunciation, authoritative and irrevocable, settled we submit the law of this case beyond discussion, so far as the jurisdiction of the court, the constitution, and any proposition of law presented by the original bill and supplemental bill are concerned. It is beyond the power of either the complainant or the defendant to reach this court for the purpose of securing a reconsideration of such questions. In this case, the con-

stitutional and jurisdictional principles, are no longer the subject of appeal.

Conceding the full force of the rule: "If a claim is made in the Circuit Court, no matter by which party, that a state enactment is invalid under the Constitution of the United States, and that claim is sustained, or rejected, "that this court will review the judgment at the instance of the unsuccessful party, whether plaintiff or defendant. (*Loeb* v. *Columbia Tp.*, 179 U. S., 472-478), we contend that the only questions which can be raised under any of the subdivisions of Section 5 of the act of the 3rd of March, 1891, "must be real, and the controversies they present must be substantial, not only from the nature of the principles invoked, but from the relation of the party to them by whom they are invoked."

Lampasas v. *Bell*, 180 U. S., 276-284.

And we further maintain that when the Federal controversy is ended, the jurisdiction of this court terminates. The appellate jurisdiction of the Supreme Court is based, by the very language of the statute, upon the fact that the case involves the construction or application of the Constitution of the United States, but when that application and construction is conclusively settled, this court's connection with it, in view of the very purpose for which the intermediate court, the Circuit Court of Appeals was created, should cease. For instance, assuming that the complainant in this case, after the decision in its favor on the former appeal declaring the existence of a Federal question, and sustaining the jurisdiction, was accepted as binding law by the court, and upheld by the court

below, but the decision of that court had been against the complainant on the merits, would that complainant have a right of appeal to this court on the merits? In other words, is this Federal question, conclusively determined and disposed of, to be permitted to remain in the case interminably as the basis of an appeal to this court upon every issue or proceeding that might arise in the case, wholly foreign to any Federal question, simply because at one time this court had jurisdiction by reason of an undetermined Federal question? We submit that the act must have a reasonable construction, that so long as there is really a Federal question in the case, asserted, either by the complainant or the defendant, the jurisdiction of this court on appeal will be upheld, but that when that Federal question, has by judicial utterance been eliminated, every other minor or subordinate question, or those that relate to the merits, should find a hearing, if at all, in the Circuit Court of Appeals. It seems to us clear, that so far as the complainant is concerned, the proposition that it cannot have an appeal *on the merits*, after the court has sustained the jurisdiction in the court below, is no longer open to controversy. This court in *Anglo-American Provision Company* v. *Davis Provision Co., No. 2*, 191 U. S., 376, has recently announced, "when the Circuit Court has decided the question of its jurisdiction and the alleged unconstitutionality of a state law in favor of the plaintiff, but has decided against him on the merits, the plaintiff cannot appeal directly to this court under the act of March 3rd, 1891, C. 517, Sec. 5, for the purpose of a revision of the judgment on the merits." This is a construction of the act which places a limitation upon the broader

meaning of its terms. In the Anglo-American Provision Company case, this court interpreted the words of the statute, to wit:

"In any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States" saying:

"Those words are general in form, but they do not mean that whenever a party makes a case of that sort he may appeal directly to this court whenever the decision is against him, no matter on what grounds, although his contention about the state law is sustained. If a party comes into the Circuit Court alleging that a state law is unconstitutional, and the Circuit Court decides for him on that point, the mere fact that there was such a question in the case does not authorize him to appeal to this court on grounds that otherwise would not support an appeal."

Reaffirming *Lampasas* v. *Bell*, *supra*.

If the plaintiff is barred, there is no reason, we submit, based upon reason or justice, which should endow the defendant with higher rights than those possessed by the plaintiff. This court has again recently held, in *Connolly* v. *Union Sewer Pipe Company*, 184 U. S., 544, that its "jurisdiction to review Circuit Court decree extends to all cases in which question as to constitutionality of state statute is decided against claim of either party."

Rose's U. S. Supreme Court Digest, Vol. 1, p. 881.

The defendant, can therefore, also appeal to this court in cases involving the construction of the Constitution, and his rights must be gauged and limited, under like circumstances, by the same standard employed in the determination of complainant's, other-

wise there would be an intolerable discrimination in favor of one class of litigants over another. It must be admitted that the defendant in the Circuit Court, can when the facts justify it, interpose as one of its defenses an issue involving the construction or application of the Federal Constitution; but, should that issue be sustained by the Circuit Court and yet upon the adjudication of the entire case the Circuit Court decided against the defendant on the merits, could the defendant, having sustained its contention on the constitutional or jurisdictional point, and having lost the entire case on the merits, appeal to this court for the review of the judgment on the merits, simply because it had raised a constitutional or jurisdictional question and succeeded? The answer, we submit, is obvious. It cannot be done. The rules concluding the plaintiff, as clearly and distinctly enunciated in *Anglo-American Provision Company* v. *Davis Provision Co. No. 2, supra*, also conclusively fixes the status of the defendant when occupying the same attitude, so far as the constitutional or jurisdictional questions are involved. Therefore, it follows that, notwithstanding the broad and comprehensive language of the statute, which confers upon this court jurisdiction to entertain an appeal from the Circuit Court in cases wherein constitutional questions are involved, that right of appeal of the litigant is not indefinite and perpetual, but is girded by reasonable restriction. This court has well said in *Carey* v. *Houston & Texas Central Railway*, 150 U. S., 170 and 179, "The Judiciary Act of March 3, 1891,—has uniformly been so construed and applied as to promote its general and manifest purposes of lessening the burden of litigation in this

court"; and it can justly be said, "why should this court, whose dockets are crowded with cases, involving vital principles affecting the welfare of the people of the United States, the determination of the intricate questions presented by the ever expanding legislation, deemed necessary for the promotion of the best interests of the citizens of the respective states, or for the government of the territories or the countries subject to the jurisdiction of the United States, or bearing upon the relations between the United States and Foreign Countries, be called upon, because there might have been, at one time, in the case, some constitutional question, although thoroughly settled, to gravely decide whether a continuance should have been granted, in a case of no special moment to the great body of the public, or whether an amendment should have been permitted, or a paper allowed to be withdrawn from the files?" The test here is and must necessarily be that in order to hold an appeal maintainable, *under this clause* of the statute, "the construction or application of the Constitution of the United States must be involved as controlling."

Carey v. *Houston & Texas Ceneral Railway, supra.*

This court has again said, in *Cornell* v. *Green,* 163 U. S., p. 75:

"In order to give this court appellate jurisdiction under the act of March 3, 1891, C. 517, Sec. 5, upon the ground that the case 'involves the construction or application of the Constitution of the United States', a construction or application of the Constitution must have been expressed or requested in the Circuit Court."

If the constitutional question has once been decided by this court and, there remains nothing for the court below to do but to execute the mandates of this court, then so far as the right of appeal is concerned, the constitutional question is no longer controlling. In fact, it is eliminated. The power no longer exists in either party to the litigation to request "the construction or application of the Constitution" by the court.

In *Carey* v. *Houston & Texas Central Railway, supra,* the appeal was dismissed.

"No appeal will lie to the Supreme Court from the Circuit Court direct on the ground that the construction of the Constitution was involved, where the case was treated throughout by the court below as depending upon a question of chancery practice, not of constitutional right."

Rose's Digest, p. 881, citing.
Cornell v. *Green, supra.*

In the case last cited the appeal was dismissed for *want of jurisdiction,* and the court quoted the following from the previous case of *Ansbro* v. *United States,* 159 U. S., 695, 697, 698:

"And it is only when the constitutionality of a law of the United States is drawn in question, not incidentally, but necessarily and directly, that our jurisdiction can be invoked for that reason. An assignment of errors cannot be availed of to import questions into a case which the record does not show were raised in the court below, and rulings assigned thereon, so as to give jurisdiction to this court under the 5th section of the act of March 3rd, 1891."

And it is pertinent in this connection to note that the assignment of errors in this case does not undertake to present either by direct expression or implication, any Federal question. The fifth assignment, as

we have already shown, is general in its character, and objects only to the decree as rendered, without specifying any particular reason for such objection.

The Sixth Assignment of Errors

simply presents an objection to the act of the court below in perpetuating the injunction, which to all practical intents and purposes this court in its former opinion had already adjudicated, upon the face of the bill, to have been properly issued, and does not on its face purport to present a Federal question. Taking all the assignments together, as we interpret them, the sole purpose of the appellant is to secure a review of this case upon the merits. If the appellant came to this court with a view of having a constitutional question raised, the duty devolved upon it to present the constitutional question clearly and distinctly in its assignment of errors, and then, if such an assignment of errors was not supported by the record, the constitutional question thus submitted would have been entitled, under all the authorities, to no consideration. But the appellant, we submit, could not, had it attempted, have raised a constitutional question in this case, for that question is no longer open to review. This court on the former appeal, 185 U. S., 65, for all practical purposes indisputably found and established, upon the face of the original and supplemental bills, first, that there was a constitutional question involved; second, that the said bills were not susceptible to demurrer; third, that the complainant was entitled to relief, unless the defendant could show (a) "some inherent want of legal valid-

ity in the contract," (and necessarily it must have been some inherent want of legal validity not presented in the pleadings, and not involving a constitutional question, because the court had already adjudicated "that the subject-matter of the contract was within the power of the city to make," and that it could not be seriously contended that under the act of March 18, 1886, and under the ordinance of the city of November 18, 1886, no contract was entered into; (b) or "point to some such disregarded by the waterworks company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract",—in other words, present some question of fact going to the merits, which justified this attempted repudiation on the part of the city of its obligations. Under the repeated adjudications of this court, matters involved in the former appeal, and the constitutional question was beyond controversy involved in the former appeal, and was the controlling issue decided, can no longer be propounded here. In referring to the cases, we use Roses's Digest, page 213:

"Upon an appeal from proceedings under a mandate, directed to a lower court, nothing is before the court, but the proceedings subsequent to the mandate.—*Himeley* v. *Rose*, 5 Cranch, 314."

"Upon a second appeal, there is nothing before the court but proceedings subsequent to the mandate on the first appeal."

Washington Bridge Co. v. *Stewart*, 3 How., 424.

Tyler v. *Magwire*, 17 Wall., 283.

The Lady Pike, 96 U. S., 462.

"After mandate disposing of first appeal, a second

writ of error brings up for revision nothing but the proceedings subsequent to the mandate."

Roberts v. *Cooper*, 20 How., 481.

Cook v. *Burnley*, 11 Wall., 677.

"Questions expressly or impliedly decided upon first appeal, are not open for review at second appeal."

The Nuestra Senora De Regla, 108 U. S., 101.

Rose's Digest, p. 214:

"None of the questions which were before the court on a first writ of error can be reheard or re-examined upon a second."

Sizer v. *Many*, 16 How., 103.

Supervisors v. *Kennicott*, 94 U. S., 499.

Clark v. *Keith*, 106 U. S., 465.

Chaffin v. *Taylor*, 116 U. S., 572.

Thompson v. *Maxwell Land, etc., Co.*, 168 U. S., 456.

Bent v. *Miranda*, 168 U. S., 471.

This court has recently announced in *Illinois* v. *Illi-Central Railroad Company*, 184 U. S., 77-91, quoting from the earlier case of *Roberts* v. *Cooper*, 20 How., 467, *supra*, that:

"After a case has been brought here and decided, and a mandate issued to the court below, and a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the court on the first writ of error can be reheard or examined upon the second. To allow a second writ of error to a court of appeal of last resort upon the same questions which were open to appeal on the first, would lead to endless litigation. In chancery a bill of review is sometimes allowed on petition to the court; but there would be no end to a suit if every obstinate

litigant could, by repeated appeals, compel the court to listen to criticisms on their opinions, or speculate on chances from changes in its members—We can now notice, therefore, only such errors as are alleged to have occurred in the decisions on question which were peculiar to the second trial."

And added:

"To the same effect are numerous cases, some of which are cited in the margin."

And further said:

"We therefore do not stop to consider, as the appellant insists we should do, whether this court erred in any particular in its opinion or judgment on the former appeal in respect of any matter then determined. Every matter embraced by the original decree of the Circuit Court and not left open by the decree of this court was conclusively determined as between the parties by our former decree, and is not subject to re-examination on this appeal."

We respectfully ask, What is open for examination on this appeal, so far as a jurisdictional or constitutional question is concerned? That, to quote from the language of this court in *Illinois* v. *Illinois Central Railroad Company, supra,* "was conclusively determined as between the parties by the (our) former decree, and is not subject to re-examination on this appeal."

If our contention is correct, the only matter open to examination on this appeal would be the action of the court below in passing upon questions solely within its discretion, as has been repeatedly decided by this court, and questions going to the merits of the case, and even the latter questions are not, we submit, cognizable here, under the rulings above cited, but must

be presented to the Circuit Court of Appeals for the Fifth Circuit.

A further analysis of the former opinion in this case shows, as we understand it, that there has been removed from the sphere of discussion, first, any question of the power of the city to make this contract; second, any contention that the contract was not entered into; third, and pretension that the ordinance of the city of November 7, 1900, and the subsequent action of the city in voting at an election authorizing the issue of bonds to buy or construct a waterworks system of its own and refusing to pay the amount due and payable under the terms of the ordinance, did not present a constitutional question. What then, was the duty of the court below when the mandate reached it? It was compelled, first to recognize that the subject-matter of the contract was within the power of the city to make; second, that the contract was entered into; third, that the ordinance of the city, and the action of the city in holding an election to authorize the issuance of bonds to buy or construct waterworks of its own, and in refusing to pay the amount due and payable under the terms of the ordinance, were questions already adjudicated by this court to be jurisdictional and constitutional questions; and of course it did not then lie in the mouth of the defendant by any pleading to show that there was no contract entered into and that the subject-matter of the contract was not with the power of the city to make; and unless it could show, as a matter of fact, that the city did not pass such an ordinance, and that the city did not have an election held for the purpose named, and that the

city did not refuse to pay the amount due and payable under the terms of the ordinance, the defendant was also bound by the conclusions of this court. When the case reached the court below, the defendant by its answer did not deny, although its capacity for denial seems manifest by a mere perusal of its answer, those facts which this court held to involve a constitutional question, but on the contrary admitted those facts, as the answer will show. The answer of the defendant appears on pages 63 to 78, inclusive, of the record, and may be regarded, in some respects, as a discussion of the mere value of words, a criticism of the phraseology of the bill, or some parts thereof, and an argument in support of the defendant's position. Those portions of the answer which present alleged substantial defenses, or possess any evidential character, are limited. We now propose to extract from said answer such matters therein as may be regarded as material in any view of the case, so that this court can see exactly what issues were involved in the hearing before the learned Circuit Court.

ADMISSIONS.

Under this head we will now cite those portions of the answer which admit the allegations in the bill which this court said, if true, presented a constitutional question.

No. 1. "They admit that the board of mayor and aldermen on November 7, 1900, adopted a resolution which is in words and figures as follows: That the mayor be and he is hereby instructed to notify the Vicksburg Water Works Company that the mayor and aldermen deny any liability upon any contract for the use of the waterworks hydrants; that from and after

August, 1900, they will *pass* (pay) a reasonable compensation for the use of said hydrants." (Rec., 64.)

This is the ordinance thus admitted to be passed to which this court refers.

No. 2. "Your respondents admit *that* the averments in said bill that an act of the legislature was passed authorizing the City of Vicksburg to issue bonds for the purpose of contracting a city hall and a sewerage system and also for the purpose of either purchasing or building a waterworks system and authorizing the issue of one hundred and fifty thousand dollars ($150,000) for the latter purpose." (Rec., 70.)

No. 3. "Respondents admit that in pursuance of said act of the legislature an election was held to determine whether bonds should be issued for the purpose of building a city hall, of constructing a sewerage system and of buying or building a waterworks." (Rec., 71.)

No. 4. "Respondents admit the passage of the ordinance on the 19th day of November, 1886, a copy of which appears as Exhibit 'B' to complainant's bill." (Rec., 69.)

This Exhibit "B" is the contract between Samuel R. Bullock & Company and the defendant, set forth in forth in the former opinion of this court.

No. 5. "That afterwards, to wit, on the ..... day of ....., in pursuance of the authority conferred by this section (Section 5) the said Samuel R. Bullock & Co. did cause to be organized a corporation under the laws of the State of Mississippi known and designated as the Vicksburg Water Supply Company, to which said corporation said contract was assigned by the said Samuel R. Bullock & Company, and became bound with the consent of the mayor and aldermen to the terms of said contract." (Rec., 67.)

No. 6. "Respondents say that it is immaterial whether the said city has received for the past fourteen years without complaint, water from the Vicks-

burg Water Supply Company of a like character with that furnished by the Vicksburg Water Works Co." (Rec., 70.)

These admissions in the answer show conclusively the existence of a contract and the delivery of water thereunder for fourteen years without complaint (for, although the defendant did not deny that last allegation of the bill, but simply said it was imaterial, it necessarily admitted it), upon which the opinion of the Supreme Court was based. This cannot be successfully denied or questioned. All the balance of the answer refers to matters relating to the merits, if the term "merit" can be applied to anything that the defendant undertook to show in this case, which had no connection whatever with the constitutional question, and therefore, as we have heretofore sought to maintain, are solely cognizable by the Circuit Court of Appeals. This answer was in the record on the former appeal, and so far as the main legal propositions therein presented are concerned, they were vigorously pressed upon the attention of the court by the counsel then representing the defendant, as will be perceived by an inspection of the brief filed on that occasion. The *facts in* this case, independently of those involving a constitutional question, and upon which the opinion of the court was also based in the determination of the legal propositions submitted by the defendant and stated in the bill of complaint, and which go to the merits, were also either admitted by the answer or sustained by the proof. Among the things that could not be denied were the following:

First. That the legislature passed the act of the

18th of March, 1886, authorizing the city of Vicksburg to provide for a water works system.

Second. That the city of Vicksburg on November 18, 1886, enacted an ordinance, made Exhibit "B" to the bill of complaint, whereby it contracted with "Samuel R. Bullock & Company, their associates, successors and assigns, for a supply of water for public use, and giving the city of Vicksburg an option to purchase said works"; and that by section 1 of said ordinance it was provided, "That in consideration of the public benefit to be derived therefrom the *exclusive* (italics ours) right and privilege is hereby granted for the period of thirty (30) years from the time that this ordinance takes effect unto Samuel R. Bullock & Company, their associates, successors and assigns, of erecting, maintaining and operating a system of water works in accordance with the terms and provisions of this ordinance."

That section 5 of said ordinance provides:

"Samuel R. Bullock & Company, their associates, successors or assigns may procure the organization of a water works corporation under the laws of any state and may assign to it all the rights and privileges acquired hereunder," etc.

"That on March 1st, 1887, Samuel R. Bullock & Company assigned and transferred (Supreme Court opinion, 185 U. S., p. 77), all their rights and privileges acquired under the ordinance to the Vicksburg Water Supply Company, incorporated under the laws of the State of Mississippi, and the said company accepted in writing the said ordinance."

"That the said water plant was constructed in accordance with the specifications contained in the ordinance and the city accepted the same."

"That since the completion and acceptance of said

water works during a period of fourteen years up to about July, 1900, the said company fully complied with all the terms of the ordinance, and no complaint was made by the city with respect to the execution of the company's part of the contract, and the city without question paid the water company the semi-annual payments stipuated for in the ordinance."

"That on the 8th day of August, 1900, a mortgage that the said company had previously made, and which had fallen into default, was foreclosed, and all the franchises, ordinances, contracts and property described and conveyed in said mortgage deed were sold to the Vicksburg Water Works Company, a corporation under the laws of the State of Mississippi, doing business in the city of Vicksburg, and which became the owner of said water works property and entered into the operation of the same."

Third. "That on October 18, 1900, the said Vicksburg Water Supply Company executed a quitclaim deed to the said The Vicksburg Water Works Company, conveying and assigning all rights, titles and interest it might have or might thereafter acquire in said water works property, franchises, ordinances and contracts."

Fourth. "That the Vicksburg Water Works Company gave the city notice in writing of the said purchase and assignment, with a written acceptance of the terms and provisions of the said ordinance."

Fifth. "That since the completion and acceptance of the said water works the city continuously received and used the water furnished by said water works, during a period of about fourteen years."

None of these questions present a Federal question, and every one of them was proved. In the pleadings, or argument of this case on the former appeal, the appellant now (appellee then) contended, among other things, 1st, that the city had no power to make an exclusive contract; 2nd, that the use of such expression did not prohibit the city from building a water works

of its own; 3rd, that the city had no power to make any such contract; 4th, that the Vicksburg Water Works Company did not acquire by said assignment or by the said proceedings before mentioned, the said contract; and finally, that no binding contract was entered into; to all of which the court made this response (Rec., 80, 81), which we insert here, even at the expense of repetition:

"It cannot be seriously contended that, under the act of March 18, 1886, authorizing the city to provide for the erection and maintenance of a system of water works, and to contract with a party or parties to build and operate water works, and under the ordinance of the city of November 18, 1886, providing for a supply of water to the city and its inhabitants by contracting with Samuel R. Bullock & Company, their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Company, no contract was entered into. The subject-matter of the contract was within the powers of the city to make; the terms were explicitly set forth in the ordinance; the works erected were approved by the city, and the respective obligations created by the contract were duly complied with without question or complaint, for a period of fourteen years."

This court therefore after due consideration of the act of the Legislature and the ordinance, and necessarily all material principles of law involved, all of which were pressed by the defense upon the attention of the court, and which necessarily embraced the question of the exclusiveness of the contract, *so far as to prohibit the city from building water works in competition with this appellee*, and of the right of this complainant, the Vicksburg Water Works Company (denied most vigorously), to assert title to this contract, and of the power of the city to make the contract at all,

upheld the contention of complainant, and therefore settled the law of this cause, requiring the defendant to prove facts, if any, justifying the forfeiture of the contract, or to point out some inherent want of legal validity to the contract, and necessarily, of course, it must be some inherent want of legal validity not presented to or considered by the court on the former appeal. No other question is open.

The answer does not point to any *new* "inherent want of legal validity in the contract." The first proposition of law presented by the answer is contained on page 65, wherein it is pleaded "that no power was *even* conferred either directly—upon said mayor and aldermen whereby they were authorized to grant by contract, to any person or persons the *exclusive* (italics ours) privilege for any period of time to furnish and supply said city and its inhabitants with water. That said provision in said contract, is unauthorized, illegal and void."

This precise question was argued before this court, as we have shown, and the contract upheld,—as against the claim of the city to build and operate a water works of its own.

Second, the answer denied that the Vicksburg Water Works Company acquired title to the property and to the contract. This point was also concluded, we submit, by the former appeal; but on the hearing all the muniments of title under which the Vicksburg Water Works Company claimed were introduced in evidence.

Another defense sought to be introduced by the answer, is contained in the following averment:

"That by the 25th section of the charter of said city it is provided that the board of mayor and aldermen should not make any contract involving certain expenditures except upon advertisement for sealed proposals.

That by the letter and spirit of said provision the power to make any contract for a supply of water could only be exercised by said mayor and aldermen after an advertisement for bids for same and in pursuance of the bids. Yet respondents say that said mayor and aldermen did not advertise for bids for a contract to supply water, etc." (Rec., 68.)

This latter question, if not regarded as decided, was settled by the Supreme Court of Mississippi in the case of *Reid et al.* v. *Trowbridge et al.*, 78 Miss., 542.

These are the main legal propositions presented by said answer—some, if not all, of them previously argued at length before this court, and not one of them, we submit, possessing any merit.

Walla Walla v. *Walla Walla Water Company*, 172 U. S., 1, cited by this court in the former opinion, disposes of any questions relating to the exclusiveness of this contract, so far as the city's right to build its own water works is concerned. There are quite a number of averments in the answer, which the defendant made no effort to maintain by proof, several entirely impertinent and foreign to this discussion; for instance, such as the following:

"It has been the history of the corporations which have acquired and seized upon the public utilities that they have sought to evade as far as possible their liabilities and to incur the minimum of expense in the exercise of the public privileges possessed by them and have notoriously sought to press to the furthest limit their exaction from the public and their encroachment and monopoly of franchises, and the history of

said complainant in dealing with the city of Vicksburg is not an exception to the general rule." Rec., 70.)

Again:

"Respondents admit that on the 7th day of November a resolution was adopted by them as averred in the sixteenth paragraph of said bill; but they submit that it is a gratuitous assumption on the part of complainant to designate it in the several parts of said bill as 'a resolution and an ordinance.' It is to be known by its terms and its purport to be gathered from its face and its character and purpose cannot changed by any adroit appellation by which it may be designated." (Rec., 72.)

But the vital questions of fact (and there are only three), which relate to the character of the water ,the pressure upon the mains, and the rates, although productive of explosive epithets on the part of defendant, *were practically ignored by it when the cause came to be heard upon its merits.* It was alleged in the bill, as we have quoted, first, that the water furnished by the Water Works Company for a period of fourteen years "has at all times been and is now good and wholesome for public and private use and an adequate supply for the needs of said city and its inhabitants"; second, that "the pressure maintained has at all times been, and is now greater than required by said ordinance and contract." Certainly the material issues of interest to the city of Vicksburg and its inhabitants were the questions of wholesome water, and the pressure necessary to prevent the spread of conflagration. As far as the rates were concerned, they were fixed by contract, and if the contract was valid no inquiry relating thereto was pertinent. But the defendant, notwithstanding its unlicensed attack upon said rates,

failed to show that they were extortionate, and on the contrary the complainant established uncontradicted, that they were reasonable. The defendant in its answer (Rec., 69) raised the following issues:

First. "These respondents deny that the water which has been furnished by said water works company since they acquired the ownership thereof has been 'good wholesome water fit for all purposes of domestic or manufacturing purposes.' On the other hand they aver that said water has for the most part been charged with mud, sediment and other deleterious matter injurious to the health of the people who use the same and unfit for domestic use."

Second. "They deny the said Vicksburg Water Works Company has kept and maintained a pressure upon its mains to the extent stipulated and required in the contract with Samuel R. Bullock & Co. That for the failure of said company to comply with said contract in respect of the quality of the water to be furnished and in respect of the pressure required to be maintained upon said mains these respondents say that the complainant is not entitled to any relief by virtue of its terms; and that these respondents are released from its obligations." (Rec., 69, 70.)

Third. "They say that said alleged contract with Samuel R. Bullock & Co. imposes upon the inhabitants of Vicksburg and its corporate authorities an onerous and extortionate burden, that no such contract would now be made with the said Vicksburg Water Works Company or any other company at the rates prescribed in said ordinance, that they far exceed the average price charged for water in cities situated in like condition and circumstances to Vicksburg." (Rec., 70.)

In the bill filed by the city against this appellee in the Chancery Court of Warren County, a copy of which was made Exhibit "Y" to the original bill of complainant (Rec., 45 and 46), it avers:

"The Vicksburg Water Supply Company and the

Vicksburg Water Works Company have failed to provide for public and private use good and wholesome water.

That particularly since the 15th day of August, 1900, said Vicksburg Water Works Company have continuously from day to day and are now furnishing water which is not good or wholesome; that the water which has been provided from day to day by said company is wholy unfit for use and deleterious to health and that it is not even fit for ordinary bathing purposes."

This bill was sworn to, and the answer was sworn to, and if these allegations of the defendant had been proven, the complainant was *entitled to no relief whatever*, and should have been promptly deprived by the court of its contract. No corporation or individual accepting the obligation to provide for the wants of the public, should be permitted for one instant to evade such obligation, or by the imperfect discharge thereof menace the health and comfort of the public. The complainant promptly met these issues; in fact, propounded the allegations upon which these issues relating to purity of water and pressure were based in the bill of complaint, and proceeded to a trial thereof, —and what was the result? A few extracts will suffice:

Dr. Haralson, a medical practitioner for twenty-four years, stated in answer to Interrogatory 8 (Rec., 185):

"I consider the hydrant waterworks by far the most wholesome water used by my patrons in Vicksburg. My reason for so stating is because the diseases more commonly conveyed by drinking water are of more frequent occurrence among those of my patrons using cistern water than among those using hydrant waterworks water."

In answer to Interrogatory 9, he says:

"Since I have been in Vicksburg, covering a period of a little more than five years, I have never had a case of typhoid fever among those of my patrons who use hydrant waterworks water, but I have had fifty or more cases of typhoid fever during this time, among those of my patrons who use cistern water. According to this record, the hydrant waterworks water was as wholesome before as it has been since May, 1903."

And, in concluding his answer to Interrogatory 11, page 187, he says:

"We could not ask for better evidence that our water supply is not polluted than that we have not now nor have we ever had an epidemic of typhoid fever.

More than fifteen years of my professional life was spent in the eastern portion of the state, where the communities obtain their water supply from cisterns and wells. During that time I am sure that I treated from twenty-five to one hundred cases of typhoid fever annually. In one community that used well water exclusively, I had on hand at one time twenty-five cases of typhoid fever. Coming from that section to this, I was deeply impressed by the contrast and could attribute it to no other cause save the wholesomeness of Vicksburg's water supply."

Dr. Abraham L. Metz, professor of chemistry of the medical department of Tulane University, of Louisiana, and who had followed the profession of chemistry since his graduation in 1887, testified on page 200 of the record. He says:

"I have been connected with the medical department Tulane University of Louisiana since 1887, as follows: From 1887 to 1893, as demonstrator of pharmacy; from 1893 to 1896, as demonstrator of chemistry; from 1896 to date, as professor of chemistry; from 1889 to 1901, as chemist to the board of health, State of Louisiana, from 1889 to 1901, as chemist to the

board of health, City of New Orleans; from 1890 to date as official chemist, City of New Orleans.

During my connection with the health boards above mentioned, and as official chemist of the City of New Orleans, I have had frequent occasions to analyze water and water supplies in my official capacity.

I went to Vicksburg as an expert on water matters. I was in Vicksburg April 23, 1903."

He then goes on to testify about taking samples of the water, and furnishing an analysis of the water of the Vicksburg Water Works Company, giving references to scientific works, and on page 202 of the record, says:

"It is my opinion that the water taken at Vicksburg, April 23, 1903, will compare favorably with the most critical standards laid down by various authorities on water supplies."

In answer to Interrogatory 8, he says:

"I have made numerous examinations and analyses of the Mississippi river water, as furnished to the people of New Orleans. These analyses were made from various sources at different points on the river front, and from hydrants in different sections of the city. I have always found the water wholesome, except when contaminated by local conditions and sources."

In answer to Interrogatory 9 (Rec., 202):

"I know from personal observation with captains aboard ship, and from personal observation that preference is given Mississippi river water for use aboard ship. It is said that the water does not undergo the stage of putrefaction, which is common to other waters."

In answer to Interrogatory 11 (Rec., 202-203):

"I am acquainted with the writings of most of the recognized authorities on the subject of the wholesomeness of water."

And, after referring to several writers, he says:

"You wil note, however, the analyses of the Vicksbarg water, can be well judged by these very critical standards." (Rec., 203.)

Dr. Richard W. Jones, professor of chemistry of the University of the State of Mississippi 23 years; and also taught chemistry in two other colleges. He graduated from the University of Virginia, and had studied in other institutions in this country and somewhat in Europe, and had long experience in analyzing waters. He made an analysis of water for the Vicksburg Water Works Company, July, 1903. After furnishing an analysis of the water, he says (Rec., 210):

"This analysis shows that this water according to the highest and severest standards would be classed as 'pure and wholesome,' for drinking purposes."

It is to be noted in this connection that the testimony of Dr. Haralson and Dr. Metz related entirely to unfiltered water. The testimony of Dr. Jones related to filtered water, as the Water Works Company had voluntarily at a very heavy expense, upon its own volition, as shown by Mr. Crumpler, its manager, built a filtering system, as it thought it was proper to do, because the waters of the Yazoo river were turned into the Mississippi river by the government, and passing by the front of the City of Vicksburg, carried with them much of the excremental matter discharged by the city sewer, to which reference will be hereinafter made.

Jake Voeinkle, aged 64 years, engineer of the Vicksburg Fire Department; had been in the employ of the Fire Department of the City of Vicksburg for the past 35 years, with the exception of one year. On page 237 of the record, he says:

"I have both a cistern and hydrant at my home, and use both for drinking, although I usually drink the hydrant water. I ran on the river for a number of years as a steamboat engineer and never drank any other kind of water, and always found it wholesome."

He further says:

"I have also used Mississippi river water in the fire engines, and found no objection to it."

In answer to Interrogatory 8 (Rec., 238), he says:

"My experience and knowledge of this water is that there is no water more wholesome for drinking purposes, I have never found any water that is better. There is nothing better."

J. M. A. Brennan was asked (Rec., 233):

"If you have ever had occasion to use the Mississippi river water, state to what extent you have used such water, and from what point or points did you obtain said water?"

Answer (Rec., 242):

"Yes, at my residence, for drinking and cooking purposes, obtained from the water supply company."

Interrogatory 8 (Rec., 233):

"From your experience and knowledge what is the character of said water for wholesomeness and manufacturing purposes?"

Answer (Rec., 242):

"Good."

Mr. F. Strueby (Rec., 244), was general manager of the Lever Brothers' Oil Mills, Vicksburg, Miss., and had been using the water for ten years for manufacturing purposes, and had been taking said water from the Vicksburg Water Works Company, which delivered it to his mills from a system of pipes. His judgment is that it was good and wholesome water, and

the reputation of said water for wholesomeness was good.

E. S. Butts, president American National Bank (Rec., 248), testified in substance, that he had used the Mississippi river water in his home for baths, and for cooking, and obtained it from the hydrants of the Vicksburg Water Works Company; that said water had always been recommended as being wholesome, and that he had found it satisfactory for his bath and kitchen purposes. The sanitary condition of Vicksburg would compare favorably with any other of these towns and villages. "The health is very good, and is as good since the construction of the water works as it ever was before."

Charles Linstrom, master machanic of the Yazoo & Mississippi Valley Railroad (Rec., 254), testified in substance that he had been in the habit of drinking water at the shops and cistern water at home, but "I now also use the water works water at home, since I moved in my new house;" that he uses it at his home for domestic purposes, and at the railway shops for drinking and for making steam in the boilers. In answer to Interrogatory 7, he says:

"The majority of these people who know anything about the matter and have used it say that Mississippi river, say that it is the purest and most healthy water to be had."

In answer to Interrogatory 8:

"My experience has been that as far as wholesomeness is concerned, it is all right. It is good water for making steam."

In answer to Interrogatory 9:

"From what I know of the matter, I think that the City of Vicksburg is equally as healthy as any city

in the State of Mississippi or of Louisiana. I think it is as healthy now as before the waterworks plant was constructed."

D. H. Herman, proprietor of the garden restaurant, after testifying to the wholesomeness of the water says (Rec., 257):

"I would prefer the Mississippi river water as I am getting it now, better than any other water that I know of. I would sooner drink it than any other water that I can get."

With this evidence confronting it, after all of its reckless charges concerning the impurity of this water which we have hereinbefore quoted, what did the defendant do? Did it introduce a single witness to controvert these allegations? Did it offer any testimony whatever to support its own sworn allegations? Did it offer anything upon the only issue, except that of pressure and rates, on the merits, to support the burden it had to sustain? We look in vain in the record for a paragraph, a sentence, a line, a word, a syllable of testimony of this kind; and the defendant stands convicted before the court of making accusations, which, if they had been true, as stated, would have warranted a decree against the complainant. Not only this; but after all these years of vigorous contention, with delay after delay intervening, when the defendant is finally pinned to a trial and there is no longer an escape from a hearing of the issues, it invoked, it surrenders without a struggle; seeking relief only upon such petty grounds as a failure to permit an amendment, to grant a continuance, and other contentions, none of them reaching the heart of the controversy.

Pressure.

The other issue *upon the merits* relates to the pressure; and after the city for 14 years had found no cause of complaint against the water works company by reason of any alleged failure of pressure, it certainly seems to be incumbent upon the defendant to introduce some proof to show that the pressure was insufficient. Section 11 of the contract provides as follows (pages 19 and 20 of the record):

"Section 11. After the works are put in operation, if at any time the pressure gauges located at the points hereinbefore named shall indicate a pressure of less than twenty (20) pounds on the distributing mains at the highest point of elevation for the period of two weeks in succession then the rental for the use and employment of the hydrants for the purposes aforesaid shall cease until the standard of pressure in this section provided shall be attained, provided, however, if the pressure indicated as aforesaid, shall be less than twenty pounds for two calendar months in succession then all the rights and privileges of the said Samuel R. Bullock & Company, their associates, successors and assigns, acquired by virtue of this ordinance shall at the option of said board of mayor and aldermen made in writing cease, determine and be null and void. But nothing herein contained shall be so construed as to prevent the said Samuel R. Bullock & Company, their associates, successors and assigns from temporarily shutting off the water from its said system or any portion thereof for the purpose of making repairs or extensions to the same; and no liability shall attach to the said Samuel R. Bullock & Company, their associates, successors and assigns for the suspension of the supply of water provided the repairs or extensions are made and the water turned on again without unnecessary delay. But the city shall not be liable to pay the rental for any hydrant during such time as the proper supply of water cannot be procured therefrom."

This is an explicit contract, easily understood, and if there was any objection on the part of the city by reason of pressure, that objection, by the very terms of its own solemn obligation, was required to be *in writing*, and there is nothing in the record to show that the city ever made any such objection. But independently of this proposition, Mr. Crumpler, the manager of the Water Works Company, filed certain charts as Exhibit "E" to his deposition. They were so many in number that, upon the application of the appellant, it was excused from having the same copied into the record, and the originals have been transmitted to this court. These charts show that at no time was the pressure below the stipulated minimum figure, to wit, twenty pounds, for a full period of two weeks; and, on the contrary, the testimony of Mr. Crumpler shows, that the representative of the city fire department did not or would not always open the hydrants far enough to get the full pressure from them when there was a fire.

RATES.

The remaining question upon the merits (which, from the fact that the contract provides for compensation or rates to be charged for the use of water, did not require complainant to introduce proof), yet in view of the charges that the appellant had made, that such rates were unjust and extortionate, it was to be expected that it, would on the hearing of the case, supplement the charges with *some evidence*, if such evidence was procurable. The fact that the defendant *permitted such a momentous issue, raised by itself, to*

go by default, denies it the right to be heard upon that subject here. But the appellee is not without proof on that subject, although such proof was not necessary for the determination of its case. Mr. Crumpler, whose testimony on this subject was unchallenged, although he had been asked two hundred and forty questions on cross-examination, testified (Rec., 268):

"The hydrant rentals and rates named in the contract between the city and the water works company, and regulations as per Exhibit "H," a part of this deposition, are reasonable, and I have examined the city records to ascertain if there were any minutes, resolutions or ordinances of any kind, complaining of or notifying the water company or any of its predecessors, that the contract between the city and S. R. Bullock & Company was not being complied with in any particular, prior to November 7, 1900, and I find there is none; and the city clerk also tells me that there is nothing prior to that time."

Exhibit "H" appears on pages 304 to 305 of the record.

It is to be noted that no objection was made to any of the testimony on the part of the appellant, so far as this record indicates.

Thus, we have shown that the propositions of fact containing merit, which would justify an application to the chancery court, to wit, the wholesomeness of the water, the rate of pressure, and the reasonableness of the rate,—are all issues wherein the evidence is overwhelmingly in favor of the appellee. All the material principles of law presented by the answer, as we have shown, are embraced in the conclusion reached by this court on the former appeal, and none of them present any federal question in addition to the one heretofore decided.

We therefore submit this case should be dismissed for want of jurisdiction.

SEVENTH AND LAST ASSIGNMENT OF ERROR.

There is another assignment of error, to which we have not yet referred, and, of course, if this court is without jurisdiction, as we contend, it is not necessary to give it consideration, but for the purpose of having *all matters* which the defendant has presented by its assignment of errors before the court, we will now discuss the proposition raised in the seventh and final assignment which is as follows:

"7th. The court erred in grating a mandatory injunction against respondent commanding respondent within one year to build and construct a sewer whereby the sewer now existing on Washington street in the City of Vicksburg should be extended and made to discharge at some point on the Mississippi river south of the intake of complainant."

For this purpose it may be proper to make further extracts from the record.

The original bill charges, among other things (Rec., 8), that a large underground gutter had been constructed by the City of Vicksburg in 1870, for the purpose of conducting surface water into the Mississippi river, and that,

"Some time after the Vicksburg Water Supply Company was put in operation, the citizens and inhabitants of defendant along or near Washington street began to connect the water closets on their residences, hotels and stores with this gutter through the acquiescence and consent of defendant, to that extent until it has been converted into a partial sewer for said street for said water closets of said residences, stores and hotels, and if defendant permits a general connection with

this gutter for such purposes the sewerage thereof will pollute the waters of said river to that extent so as to make it unfit for domestic and drinking purposes as provided by said contract and ordinance with said city, and unless the use thereof is prohibited by defendant, your orator will be compelled to cut off and prevent the use of its water for such closet and sewer purposes by said residences, hotels and stores, in order that good and wholesome water may be delivered to said city and its inhabitants as is being now delivered."

This original bill was filed as stated, on the 16th day of February, 1901, and among its prayers was one for a decree "requiring and compelling them not to permit the inhabitants along Washington street of said city from using said gutter or culvert as a sewer." (Rec., 12.)

On September 22, 1902, as shown by the testimony of Mr. Crumpler (Rec., 219 and 220), the appellee addressed a communication to the appellant, in which, among other things, it says:

"We most respectfully, but earnestly call your attention to the dangerous condition that now partially exists, and which will wholly exist as soon as the contemplated canal is fully completed and the Yazoo river is flowing directly in front of the city, which we presume will be the case after the next thirty foot rise in the Mississippi river, and is likely to come at any time, and almost certain to come not later than ninety days.

We refer to the sewage excremental matter that is being discharged from the culvert at the foot of Washington street, just north of the Y. & M. V. passenger depot. This culvert was originally built for surface drainage only, but has been turned into a sewer for stores, hotels and other buildings along Washington street for a distance of about eight blocks. There have been also sewer mains laid along Veto, South, Crawford, Clay, China, Grove, Jackson and Main streets connecting with this culvert; residences and other

buildings along these streets are connected or being connected daily with these sewer mains, so that the entire sewerage outlet of the city is at the foot of Washington street, as above stated, thus attempting to make a complete sewerage system in the most thickly populated portion of the city.

We think it also proper to state that all these connections have either been made by your direct authority, or by your formal acquiescence. We especially call your attention to the further fact that the outlet of this excremental matter is at a point above where the intake pipes of the city water works are located, and therefore, partially pollutes the water, not during high water, at the intake pipes of the Mississippi river, but as soon as the canal is open and the Yazoo river is allowed to flow directly in front of the city the pollution of the water at that point by this excremental matter will be continuous every day and every hour, thereby contaminating the waters at the intake pipes of the city water works, located about one mile from the sewerage outlet making it unfit for use, and thus producing typhoid fever and impairing the health of the city, and causing the patrons of the city to stop the use of the water and entailing great loss upon us.

You will undoubtedly recall that when the pumping station of the water works was located, neither this culvert, nor any of the connections was then used as a sewer, and that it has only been used for sewer purposes within the last few years, a use which has been sanctioned by you.

A bill was filed as you are aware, in the United States Court by this company praying, among other things, for a decree directing your honorable body to stop the use of this culvert for sewerage purposes, but notwithstanding the pendence of this litigation you have continued to permit it and authorize this sewerage connection, and on this very day there are sewer mains being laid to or connected with this culvert by your authority or consent, and if this practice is not discontinued this company will be irreparably injured."

And the communication concludes with the following respectful address:

"We respectfully request your honorable body to remedy the condition to which we allude without compelling us to apply for an injunction to obtain relief. We also respectfully notify you that unless your honorable body prevents this culvert being used for sewerage purposes, and thus remove this constant menace to the health of the people, the city will necessarily be held liable for any and all damages and expenses the water company may sustain, or be put to, as you are already responsible for permiting this condition of affairs to exist.

We respectfully request that you take immediate measures to remove this great cause of complaint."

This communication, as shown by the testimony of Mr. Crumpler (Rec., 218), was delivered to the board of mayor and aldermen. He says:

"The water company has personally, together with its attorneys, gone before the board of mayor and aldermen about two months ago (this testimony was taken on the 20th day of November, 1902), with a written petition requesting them to quit the use of said culvert for water closet connections, but like similar complaints, it seems to have fallen on barren ground."

Thus the court will perceive that at the inception of this litigation, complaint was made about this sewer, and early in the history of the proceedings a pacific, amicable and courteous attempt was made to induce the city to take steps to remedy a condition of affairs, which was becoming intolerable and which was a grave menace to the health and happiness of the people of Vicksburg. To this polite appeal no attention was paid, and in fact, the defendant, in none of its testimony, made an effort to disprove the allegations of the bill in this respect, and so little concerned was

the appellant about a matter so fraught with disaster to thousands of people that it even failed or declined to cross-examine the witnesses introduced by complainant to sustain this allegation.

Mr. J. B. Smith, who was a plumber and had been engaged in that business for eighteen years, testified (Rec., 221) that the sewer had been built for the drainage of surface water, but it was now used to drain surface, water, water closets, urinals and sinks. In answer to interrogatory No. 7, he says (Rec., 221):

"I think there are between three and four hundred water closets and urinals connected with this sewer at present."

In answer to interrogatory No. 9, he says:

"I know of a great many put in by consent of the board of mayor and aldermen of Vicksburg."

In answer to interrogatory No. 10, he says:

"It is my opinion that the use of this underground gutter along the most populous street of the city is a menace to the health of the city, and the sewerage thus discharged flows down past the intake pipes of the city water works and pollutes the supply furnished the city."

Mr. William Stanton, an architect, and a resident of Vicksburg, testified that Stanton & Company, the firm of which he was a member, constructed the sewer for the city of Vicksburg, and that "the purpose for which the underground gutter along Washington street was originally constructed was to carry off the surface water caused by rains in their descent down the hill cut the streets west of Washington street very badly, and also for the purpose of draining the basements of the buildings on the east side of Washington street, and it fully performed this duty." (Rec., 220, 221.)

A. L. Pierce testified that he was a civil engineer for the city of Vicksburg in the years 1870 and 1871, and that he supervised the construction of the gutter. He says (Rec., 222):

"This underground gutter was built for the purpose of surface drainage, and constructed in 1871 as near as I can remember, by the firm of Stanton & McKenna."

In answer to interrogatory 8, he says (Rec., 222):

"The discharge of the excremental matter into the water so near the intake pipes of the water works is endangering the health of the city."

He testified on the 20th day of November, 1902. (Rec., 222.)

Mr. M. O. Crumpler testified on the 20th day of November, 1902, and his testimony is in substance as follows:

"The sewer was originally constructed for the purpose of carrying off surface water," and "is now used for water closet and urinal connections for the purpose of carrying off excremental matter, and for carrying off surface." "There has been, and now is, sewer mains laid along other streets which have their connections and outlet into the sewer on Washington street. These streets are, Veto, South, Crawford, Clay, China, Grove, Jackson and Main, each of which have a sewer main laid along them and all connected with Washington street sewer."

"The residences, stores and other premises on these streets have their water closets connected with thse sewers and use them daily, all of which have their outlet into the sewer on Washington street, above described. (Rec., 217.)

In answer to interrogatory 10 he says (Rec., 217):

"I know it to be a fact that the excremental matter discharged from these sewers which is near the intake pipes of the city water works will pollute the

water so as to produce typhoid fever and other fatal diseases. In other cities where a similar condition, as to the sewer outlet and intake pipes of the city water works exist, it has produced typhoid fever and other diseases to an alarming extent."

In answer to interrogatory 11 he says (Rec., 217):

"Yes, our company has protested again and again against the use of said culvert for sewerage purposes, that is, for such purpose as it has recently been put to, such as water closet connections, etc."

On page 218 of the record, he testified, in answer to interrogatory No. 12:

"The population of Vicksburg and its suburbs is about 22,000. We are supplying about seven thousand five hundred people with water. Very near the entire business of the city is done on Washington street, and its immediate section. I think there are about nine or ten thousand people living and doing business on Washington street and its immediate section. All the big hotels, office buildings, stores and other public buildings, such as the custom house, and postoffice buildings, and most all stores, restaurants, saloons, etc., on Washington street and immediate section have their water closets connected either directly or indirectly with the sewer along Washington street and the lateral sewers connected therewith."

In answer to interrogatory 13, he says, among other things:

"I attach a map to my interrogatories and mark it Exhibit "B" and make same part of my answer, which shows the sewer on Washington street, together with the lateral sewers connected therewith, and the outlet of same and the city water works intake pipes, showing their relative position." (Rec., 218.)

This exhibit is missing from the record, as certified to by the clerk, as we will hereinafter show.

In answer to interrogatory No. 14 he says:

"Yes, I know that the city council have passed resolutions authorizing permitting or generally acquiescing in sewer mains being laid and water closets being connected therewith, all of which have their outlet at place designated on map Exhibit "B."

And finally, in answer to the last interrogatory, No. 15 (Rec., 218, 219), he says:

"The city water works were built in 1887, and the pumping station and intake pipes were located on the Mississippi river at which point it gets its supply of water for city and domestic purposes and that it has continued to get water from said place up to the present time and is doing so now. When the city water works located its pumping plant below said outlet of sewer, the sewer was used for surface drainage only, and no water closet was then connected with the sewer, and was not until within the last few years. The condition continues to get worse by the continued daily connections of water closets in the most thickly populated part of the city, as well as other parts of the city. The health of the city is impaired by this condition of affairs, and besides this condition will ruin the city water works in this, it will cause the patrons to stop the use of the water and will throw the company in bankruptcy. The city council has also within the last twelve months or such a matter, made or caused to be made the entire dumpage from the scavenger carts of the city just below the outlet of this sewer. The dumpage consists of matter gathered up by the scavenger carts over the city consisting of all waste and rotten matter, such as rotten cabbage, potatoes, bananas, apples, peaches, grapes and all other rotten vegetables and fruits, such as is usually put into slop barrels. Also all small dead animals, such as cats, dogs, rats, etc., all of which contaminates and pollutes the water at the intake pipe of the city water works from this place of dumpage."

This appalling situation of affairs, thus disclosed by the uncontroverted testimony, existed on the 20th

day of November, 1902. The appellant, apparently perfectly indifferent to these disclosures made no serious attempt whatever to defend its action, and in May, 1904, when this final decree was rendered, had still made no effort to remove this source of danger from the streets of Vicksburg. It had thus turned a deaf ear to the appeal of the water works company, and that company, without any obligation imposed upon it by its contract, voluntarily assumed to relieve the people from danger so far as it could, by the erection of a costly filtering plant.

Upon this subject Mr. Crumpler testified February 29, 1904 (Rec., 267):

"The water company has made recent improvements on its plant. One of the greatest improvement—the construction of a complete filter plant to filter all of the water delivered to the city, costing about thirty thousand dollars. The reason we had to put in the filter plant was on account of the sewerage discharge polluting the water a short distance about (above) our intake pipe, as stated in my previous deposition on the sewerage outlet from the city, which the city has recently put into operation; and the further reason that the United States government has recently changed the course of the Yazoo river, causing it to flow in front of the city of Vicksburg, Mississippi, thereby taking all of the city garbage dumps and sewerage discharges directly in front of our intake pipes, which is fully set in my former deposition on the sewerage question."

But notwithstanding this fact, the attacks of the city upon it did not cease. Persistent effort seemed to have been made to destroy the integrity of the contract and to delay the payment of compensation while still using the water furnished under the contract. It had also hampered this complainant with litigation in

the state court, as disclosed by the record. It had appealed to the legislature for power to build water works, and held an election to acquire money for that purpose. It had solemnly repudiated its obligations in November, 1900, and it was impeding and assailing this appellee time and time again in the orderly pursuit of its business, as shown by this record, and yet it never made a single attempt, however puerile, to protect the health of its inhabitants from the danger caused by allowing this underground drain, constructed as a conduit for the passage of the pure rain water, to be converted into a deadly instrument whereby the health of every inhabitant of Vicksburg using said water was assailed.

When the court met in May, 1904, over seventeen months after this testimony of Smith, Stanton, and others was taken, it was apparent that the appellant had made no effort to protect its people from this constant menace to their prosperity and health, so far as anything in this record is concerned; and while the health of its inhabitants were threatened by its own act, it was propounding questions of law, which if effective would defeat any right of recovery on the part of this complainant. While the city was pleading the invalidity of the "exclusive" feature of the contrat, the excremental matter of three or four hundred water closets and urinals, according to the testimony of Mr. Smith, was being discharged into this underground swer, carrying with it the possibility of disease and death. No apology was offered for this condition of affairs, and yet it was a matter which necessarily the court had to deal with. The record does not show that appellant made any offer to disconnect these water

closets and urinals from the sewer, or to discontinue the use of the sewer; or to defend such use. It was a serious question then what would happen to the people of the city, if all these water closets and urinals, serving the needs of thousands of people, should be suddenly disconnected from their outlets, and all the deadly matter contained in these cess-pools remain stagnant therein, and with all their foul and noisome airs reaching the surface unconfined, and perhaps carrying into many households the germs of deadly infection. It is a serious matter to determine how far an entire people should be charged with the extraordinary expense of building new cess-pools and sinks and closets and drains with no proper outlet provided by the city for any excremental matter therein to be contained. A grave question is presented by the proposition whether these people could have built under such circumstances new water closets or cess-pools which would serve their purpose, and not be detrimental to the public health. A large hotel, for instance, with hundreds of rooms and several hundred guests, with no ground convenient for the erection of cess-pools, with no means available for the conveyance of excremental matter, would find great difficulty in successfully meeting the emergency. All these and kindred questions would necessarily engage the attention of the court. It was the desire of the water works company to deal fairly and leniently with its customers, to impose upon them no unnecessary hardship and expense, to subject them to no inconvenience that could be avoided, and besides these patrons were not before the court.

The learned judge had to deal only with the parties subject to his jurisdiction, and the sole offender was the appellant, who had licensed these outrages against the public health. What decree was he to render that would be just and fair to the inhabitants of the city of Vicksburg, the rich and poor alike, and proper under the circumstances? We submit the court below reached the only conclusion consistent with right and justice and equity. It was not the purpose of the appellee to destroy valuable privileges already granted by the city and to invoke by the stroke of the pen a decree fraught with hardship, if not financial disaster, to hundreds of people. It therefore did not ask the court to require all the good citizens of Vicksburg who had been depending on this sewer as a vehicle for the conveyance of the poisonous excrement from their premises to discontinue its use, by decreeing that the consent theretofore given and which consent was producing the damage, be withdrawn, but did ask the court to prevent any further connection for the conveyance of sewage or excremental matter, so that the public would be warned and those intending to build would be notified that they could not depend upon this sewer as a means of relief. But what was to be done with the culvert or sewer into which the contents of three or four hundred cess-pools and water closets and urinals were daily discharged and thence transported to the waters in front of the city, thence to become by a break down of the filtering plant, a threatened source of continuous injury to the weal of the city. These inhabitants of Vicksburg had come to rely upon this sewer; they had made their arrangements accordingly, and were not to blame for act-

ing under the sanction of the municipal authorities. Why should they be punished when the real offender stood in court and amenable to its process? Therefore the court in effect says,—"Having permitted your sewer to be diverted from its original purposes, having authorized hundreds of connections from sinks, cess-pools and closets, having made this underground culvert a sewer to all practical intents and purposes; and sanctioned it by years of use, over the protest and against the prayers of the complainant, you will be made to repair the injury you have done, so far as it can be repaired; you will be made, so far as the power of the court can be invoked, to give some heed to sanitary needs; you will be compelled to undo the wrong that you have done, without detriment to others, and having created a nuisance deliberately and in the face of the strenuous protest of this complainant, you must do what you can to abate this nuisance." As the only proper solution of a distressing problem, was not to destroy existing connections, which we have shown would have been fraught with injury to the innocent, not to discard the sewer, the use of which had already been licensed for this purpose, but to make the sewer effective to carry away the deadly matter after the city had authorized it to be discharged into the sewer, and the court in effect said, as the decree declares, "you must so construct an outlet to this sewer or culvert that the matter which you have authorized to flow therein shall pass beyond the zone of infection and be discharged below the intake pipe of complainant."

The exhibit filed in this cause and which is missing, undertook to show the said "sewer with the lateral sew-

ers connected therewith, and the outlet of same and the city water works intake pipe with their relative positions." With this exhibit before the court, in view of the alarming situation, imperative action was required, and the only proper solution, we submit, was to require the appellant, as we have stated, to repair the wrong it had committed, as far as it could do so. It seems more reasonable and less expensive to require the city to *create a proper outlet for its sewer* than to demand that the city should assume the responsibility and cost of destroying the sewer and the probable damage suits resulting from such action. It seems more reasonable and less expensive to require the city to find a method of discharging the excremental matter at its own charge, than to entail upon this appellee the duty of filtering the water to keep such matter from contaminating its water supply, or to impose upon the innocent unoffending citizens of Vicksburg who had connected with said sewer in good faith and with the municipal consent, the unjust and doubtless burdensome outlay of providing additional and different outlets for their water closets and sinks and drains.

But the court introduced even into the decree a saving clause, and expressly provided:

"That if the defendant is unable to construct or extend said sewer or culvert and construct said culvert within twelve months from this date, it can apply to this court for good cause shown for an extension of time beyond the said period of twelve months."

If the city was without means to construct, and could so show to the court, under the order, as we construe it, an extension of time would necessarily

have been granted, and under such circumstances, there would be practically no limit to this extension of time.

If the question of cost is to be pressed for consideration, the same argument could be made if the city should be required to destroy the sewer, for that would require an outlay of money. After the city had authorized these connections, and the parties who made the connections had refused to comply with the order of the city directing them to discontinue such connections, whose duty would it be to disconnect? It might be the appellant would be liable for damages, but surely it would be its duty to assume the expense of closing the conduits or means of access to the sewerage system. These acts would require money; would be a source of expense to the city; yet we cannot think it would be doubted that the power existed in the court to compel the city to close these apertures unlawfully authorized. It seems more reasonable and more in consonance with the principles of equity to require the city simply to extend a drain which it had created and made a sewer by positive acts, beyond a point where no injury could result to the water works company or the inhabitants of the city. We submit a question is presented where the city had undertaken to build a sewer to a certain given point, and that point became a source of danger to the health of the people and the property of the water works company. Having built the sewer to that point, what objection can there be to requiring it to extend it to a point of safety? Suppose the city of Vicksburg had concentrated all the surface water pouring into the streets of Vicksburg into a single channel and per-

mitted the contents of that channel to pour unobstructed upon the residential property of one of the citizens, is the power of the court limited in a case like that to an injunction that the city close that outlet, rendering all the valuable work that it had done to procure such outlet for its surface water valueless,—in other words, to overthrow the entire surface water system of the city, when by a mere extension of the outlet in another direction the property of the residents would not be touched and no damage done? The power of the court to issue a prohibitory injunction in cases of that sort cannot be questioned. Why should it have less power when a mandatory injunction is invoked? What the court is called upon to do is substantial justice, to use its remedial powers so to avoid needless injury and to do equity. We do not think the question of the ability of the city to construct said outlet is now involved, but if it could be shown that the city had not the means to build the culvert and stop the nuisance, it would be no worse off than any other insolvent debtor against whom a writ of execution has been issued and upon which a *nulla bona* return had been inscribed. If the city has not the means to build this culvert, let it say so at the proper time; the question now is the power of the court to issue such an injunction. It was the only proper course for the court to pursue under the circumstances consistent with the best interests of the greatest number. We will refer to some of the cases we regard as pertinent in this connection, but submit that the question we are now considering is one for the Circuit Court of Appeals to decide and not this court.

In a proper case the power of the chancery court to issue a mandatory injunction must now be conceded. Mr. Gould in his work on Waters, section 552, says:

"The power to issue a mandatory injunction was formerly doubted; and resort was had to prohibitory circumlocutions. Thus Lord Eldon refused to order repairs to be made to a canal, but granted an injunction restraining the defendant from impeding the use of the canal by continuing to keep it or its works out of repair. Where the injunction requires a positive act on the part of the defendant, it is called a mandatory injunction, although expressed in negative terms. But the power to issue a mandatory injunction is completely established, and has been frequently exercised in cases affecting waters."

Section 553:

"Where the wrongful diversion of water has been completed before the filing of the bill, equity will compel the restoration of the stream to its natural channel by a mandatory injunction. And where defendants, in relieving their lands from surface-water, deepened a ditch upon the highway, and thus caused an increased and unnatural flow of water through the surface-drains of adjacent owners, causing injury to their lands, and making further injuries probable, a mandatory injunction was issued directing the defendants to fill up the ditch."

This court in *Missouri* v. *Illinois and The Sanitary District of Chicago*, 180 U. S., 208, reaffirming the doctrine announced in *Mugler* v. *Kansas*, 123 U. S., 623, 673, said (p. 244):

"The grounds of this jurisdiction, in cases of purpresture, as well as of public nuisances, is the ability of courts of equity to give a more speedy, effectual and permanent remedy than can be had at law. They cannot only prevent nuisances that are threatened, and before irreparable mischief ensues, but arrest or abate those in progress, and by perpetual injunction protect the

public against them in the future; whereas courts of law can only reach existing nuisances, leaving future acts to be the subject of new prosecutions or proceedings. This is a salutary jurisdiction, especially where a nuisance affects the health, morals, or safety of the community."

In that case "the object of the bill was to subject this public work (an artificial channel or drain) to judicial supervision, upon the allegation that the method of its constructions and maintenance will create a continuing nuisance, dangerous to the health of a neighboring state and its inhabitants, and the bill charged that the acts of the defendants, if not restrained, would result in the transportation, by artificial means, and through an unnatural channel, of large quantities of undefected sewage daily, and of accumulated deposits in the harbor of Chicago, and in the bed of the Illinois river, which will poison the water supply of the inhabitants of Missouri, and injuriously affect that portion of the bed or soil of the Mississippi river which lies within its territory." The bill was demurred to and the demurrer was overruled.

This was a suit brought by the State of Missouri against the State of Illinois and the Sanitary District of Chicago asking this court to restrain or abate practically, a nuisance, and this court unhesitatingly assumed jurisdiction.

"City's right to make drains does not indicate the right to create a nuisance, public or private."

Rose's Digest, U. S. S. C. R., 1757.

Citing

Richardson v. *Boston,* 19 How., 270.

Even, as to the District of Columbia, it has been held, that "the adoption of sewer system being a quasi-judicial act, is not reviewable in a private action for damages, but the construction and repair of sewers being ministerial, the city is liable for damages resulting from negligence therein."

Rose's Digest, *Ib.*

Citing:

Johnson v. *District of Columbia*, 118 U. S., 22.

"A municipality may not empty its sewers upon private property, without acquiring the right to do so."

"Where a municipal corporation discharges or threatens to discharge sewage from the outlet of a permanent sewer directly upon private lands without having acquired the right so to do, the owner is entitled to the judgment of a court of equity restraining the injury committed or threatened; and he is not confined to a recovery of his damages in an action of trespass."

New York Central & Hudson River R. R. Co. v. *Rochester*, 127 N. Y., 591.

"Plaintiff owned and occupied certain premises, across which ran a stream fed by springs of pure water. He collected the water of said stream into an artificial basin and used it for domestic purposes and the propagation of fish, and in winter procured from it a supply of ice. Defendant thereafter constructed sewers, through which, not only surface-water, but the sewage from houses and water closets was discharged into said stream above plaintiff's land, rendering its water unfit for use and covering its banks with filthy and unwholesome sediment. Held, that these acts constituted a nuisance, to restrain which, as well as to recover his personal damages, plaintiff could maintain an action."

"One entitled to the use of air or water in its nat-

ural condition, and who is injured by its pollution, may maintain an action against the party causing it, whether an individual or a corporation."

Chapman v. *City of Rochester*, 110 N. Y., 273.

"Equity will interpose, by mandatory injunction, to compel the restoration of running water to its natural channel, when wrongfully diverted therefrom, at the suit of the party whose lands include either the whole or a part of such channel."

Corning et al. v. *The Troy Iron and Nail Factory*, 40 N. Y., 191.

"It is the law that if a municipal corporation by its system of constructing sewers renders an outlet necessary, it must provide one."

Citing:

City of Evansville v. *Decker*, 84 Ind., 325.
City of Crawfordsville v. *Bond*, 96 Ind., 236.
Van Pelt v. *City of Davenport*, 42 Ia., 308.
Byrnes v. *City of Cohoes*, 67 N. Y., 204.
City of Fort Wayne v. *Coombs, et al.*, 107 Ind., 75.

An interesting case, showing the extent to which relief will be granted in a court of chancery where the facts justify it, is *City of Llano* v. *Llano County* (Court of Civil Appeals of Texas, Nov. 10, 1893), 23 S. W. R., 1008. This was an action "by the City of Llano against the County of Llano to abate and remove the county jail and the cesspool in connection therewith from the public square of the City of Lllano, they being an obstruction on said public square in the nature of a purpresture and public nuisance; and also an abatement of the cesspool as a nuisance, resulting from its improper

construction, whereby noxious gases arising from human faeces deposited therein are dangerous and deleterious to the public health of the citizens of said city. The court below sustained a general demurrer to the petition, and also a special demurrer to the effect that it does not appear that the City of Llano has 'such an interest in the subject-matter of said suit as would entitle it to any relief.' The City of Llano declining to amend, its suit was dismissed." The court found no difficulty in maintaining that the city, as the representative of the public, had the right to bring the suit, also in applying the general law of nuisances when disposing of the case on its merits, notwithstanding the defendant was a county, and thus a governmental agency. The court said (p. 1012):

"The fact that the county may use the square in part for its jail building, and it being of a public or quasi public use, will not excuse it from the application of these general rules, unless such jail is a use that is permitted by the terms of the dedication. If this square can be used by the county for its jail building, and this be justified upon the ground that it is a public use,—or, in other words, a use by the public,—it or the city, for the same reason, could use and appropriate the entire square to sites for the erection of such public buildings as they may be by law authorized to erect. The statement of such a proposition is an argument that defeats it. Clearly, the county or the city would have no such right. * * * And it makes no difference that the obstruction may not practically interfere with the use by the public; if it in fact is an obstruction and encroachment that is not in keeping with the use for which the property was dedicated, it is a purpresture, and a nuisance, and as such is abatable."

After citing a number of cases, the court again says (p. 1012):

"Such obstructions and encroachments upon the highways that are permanent in character are in law regarded as purprestures and public nuisances *per se*."

"The facts stated in the petition, if true, show that the use of the public square for the jail and cesspool was unauthorized, and that they are encroachments and obstructions upon said square in the nature of purprestures and public nuisances."

If, therefore, a county, with its limited powers, can be compelled to remove cesspools and jails, which necessarily involves large outlays of money and a great destruction in the value of public property, why should not this city be compelled to abate a nusiance which endangers to a greater extent the public health than the mere erection of a cesspoll on a public square, or the mere building of a jail on a public square, or its use of a sewer so regulated by the court as to prevent irreparable injury to the appellant? We submit that where the city undertakes to maintain a sewer and thereby creates a private or a public nuisance, the city acts then, not in a legislative or governmental, but in a ministerial capacity, and is within the reach of the court.

Mr. Wood in his work on Nuisances, says (page 1032):

"As to the *necessity for a sewer, or its location, or the system or plan of sewerage*, the decision of the proper municipal in conclusive, because it is an exercise of a discretion reposed in them by the law, and consequently is not revisable by the courts; but if, in the selection of a location, it unnecessarily creates a nuisance to public or private rights, it is responsible therefor; or, if it improperly exercise any ministerial power incident thereto."

On page 1033, he says:

"A municipal corporation is liable for damages resulting from defective plans for drainage where the construction and maintenance of improper drainage, in accordance with the plans, creates a nuisance and obstructs private or public ways in which the property owner has a special interest."

And on page 1035:

"The rule is, that while the duties which are imposed upon a municipal corporation in respect to acts for the benefit of the public are purely judicial, and are exercised properly, and with proper care, no liability attaches for the consequences resulting therefrom, yet for the exercise of purely ministerial duties, or the exercise of judicial functions improperly or negligently, it is liable."

The principles of law and equity must always be adaptable to the ever expanding needs of society.—The courts do not remain dormant while civilization advances. Their remedial processes should be responsive to the exigent demands of a progressive era. The idea we wish to convey is fitly expressed in the following quotation from the elaborate opinion of the Circuit Court of the Northern District of Alabama, S. D. (*Kessler et al. v. Eudery Co. et al.*, 129 Fed. Rep., 397, decided April 15, 1904).

"Less than 50 years ago the Supreme Court of this state held that the owners of a steamboat, whose crew willufllv ran down and sank a flatboat, were not responsible for the wrong. It held, likewise, a corporation could not commit a libel, or be guilty of malicious prosecution. In applying the doctrine of *ultra vires*, it held that a charitable corporation which loaned out its funds for investment could not recover the money under the contract or in an action for money had and received. These rulings largely represented the doctrine prevailing in those days. What court would now

think of measuring the rights and liabilities of corporations in that regard by the old decisions? Courts of law and equity have constantly expanded or contracted the application of old and general principles to meet the exigencies of modern corporate development, and in properly adjusting the changed rights and relations born of new conditions. 'The sound administration of justice' will be best promoted by equity's so molding its decrees in cases of this kind as not, on the one hand, to give such effect to merely technical consideration of the nature of the artificial person called the corporation, as will improperly hamper the conduct of its business; nor, on the other hand, to enable the governing body to oppress or injure creditors or stockholders who are, in equity, the real owners of the corporate property. Pomeroy's Eq., § 111."

It is undoubted that the city has created a nuisance; that, notwithstanding the protest, objection and pleadings of this defendant, it has maintained and continued to maintain in the face of the pending bill a condition of affairs which would probably not be tolerated, for an instant if it had resulted from the action of a private individual. It must be conceded that, under proper circumstances a mandatory injunction will lie; it must be conceded that the city in this case could be enjoined from further pollution of the water supply; it must be conceded in this case that the court could have directed an abatement of the nuisance,—all of which would impose heavy expenses upon the city. Why, then should this ruling be regarded as an abuse of power in the court, the appellant before it in its ministerial capacity, confessedly a trespasser? It adopted the easiest method of solving the difficulty, and simply required the appellant to do what the Supreme Court of Indiana held it must do when it has constructed a sewer—it must provide an outlet.

Naturally, that outlet, in view of the fact that the Yazoo river water was flowing in front of the city and down by the intake pipes of the complainant, and that the sewer was contaminating that water and befouling the water supply, (the city being only protected from irreparable damage to health by the voluntary act of the appellee in building a filtering system, which might at times be out of repair or break down from unavoidable causes), should be located beyond the area of danger. If the county can be compelled to tear dow its jail and remove cesspools, why cannot a city be compelled to extend a channel, diverted from its proper uses by making it the receptacle of the excremental matter of a large community, to a point where no danger from its use would result? It is apparent that, in this connection the missing exhibit to Mr. Crumpler's testimony is relevant, for that indicated the location of the original sewer, the lateral sewers and their out-lets and the intake pipes of the waterworks. As we have already indicated, regarding mere questions of expense, the city was not concluded by the order. It had a right at any time within twelve months to apply for an extension, and it follows as a matter of course that if the city was in no financial condition to build this outlet; no court could enforce the liability, and the city would enjoy the same immunity from inconvenience or trouble that is vested in the bankrupt debtor, when threatened by a writ of execution.

We have discussed this proposition at some length, although it does not affect in any material aspect the main questions involved. Conceding the full force and effect that could be given to it, the only result could be

in its elimination from the decree. It is merely a subject incidental to the grave subject-matter of this controversy. We, however, also maintain that it should not be considered at all, except upon the question of a motion to affirm. There is nothing in this assignment of error, which confers upon this court any jurisdiction, and the remedy, if any, is to be found in the Circuit Court of Appeals.

We have presented thus fully the main questions of law and fact involved in the record, although in our opinion, all of them are not material in the consideration of this question of jurisdiction, for the additional reason that we propose to simply refer to them in the discussion of our motion to affirm.

II.

THE MISSING EXHIBIT.

This record, we respectfully submit, is insufficient "the clerk's certificate on its face shows that a certain exhibit is left out." Rule 8, Sec. 1, provides:

"The clerk of the court to which any writ of error may be directed shall make return of the same by transmitting a true copy of the record and of the assignment of errors and of all the proceedings in the case under his hand and the seal of the court."

The clerk in this case expressly certifies that an exhibit to the deposition of M. O. Crumpler is not embraced in the record and is missing from the files. It is specifically referred to by Mr. Crumpler in his deposition on an important branch of this case. This court has said, in *Railway Company* v. *Stewart*, 95 U.

S., 279 (284), "it is clearly the duty of the party who takes an appeal to see to it that the record is properly presented here."

In the early case of *Keene* v. *Whittaker, et al.*, 13 Pet., 459, a case was presented to this court upon an agreed statement of facts, and was submitted without argument. Mr. Justice Wayne, speaking for the court, said:

"It cannot appear therefore that this court has jurisdiction of the case; which is essential before it can give its judgment in any cause," referring to the 11th and 31st rules of this court then in force, which are practically, so far as this record is concerned, sections 1 and 3 of rule 8.

See also

Redfield v. *Parks*, 130 U. S., 623.

III.

INSUFFICIENCY OF THE ASSIGNMENTS OF ERROR.

We interpose another objection to this record, based upon what we respectfully submit to be a failure to comply with the Revised Statutes and the Rules of this Court relating to assignments of errors. Section 997 of the Revised Statutes, prescribes:

"There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

Section 1012 of the Revised Statutes, is as follows:

"Appeals from the Circuit Courts and District

Courts acting as Circuit Courts, and from District Courts in prize cases, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error."

Rule 35 of this court, among other things, prescribes, that:

"The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed."

It will be thus observed that both the statute, and the rule of this court, require an assignment of errors, and this court has expressly prohibited by said rule the allowance of an appeal until such an assignment of errors shall have been filed with the court below. In this case, as will appear from an inspection of the record (pages 370 to 372, inclusive), there is a document headed "Assignment of Errors," but not supported by the signature of any counsel, nor does it purport to be signed by appellant. This document, thus alleged to be an assignment of errors, was filed on the 8th day of November, 1904; the petition of defendant for an appeal, which purports to be signed by its solicitors, and which is not so signed by any solicitor, was filed on a subsequent day, November 9, 1904.

We further submit that a paper of such paramount importance, which, according to *Lloyd* v. *Chapman* (C. C. A., 2899), 93 Fed. Rep., 599, "is an essential condition to the granting of a writ or the allowance of an appeal," should bear, like all other pleadings,

the signature of counsel. "As the assignment is a pleading it must be signed by the party or his attorney." Encp. of Pleading & Practices, Vol. 2, p. 960. It imposes no hardship on parties to litigation if they sould be required to authenticate and assume responsibility for all their pleadings and proceedings which become a part of the record, by signing or subscribing the same. The certificate of a clerk would have but little value unless his signature was attached thereto. Any formal proceedings specifically required both by statute and by rule of this court should bear the imprint of some one whom the court can make responsible therefor, and with whom opposing counsel can confer or contend, to insure an orderly and speedy disposition of the case. In this case it is apparent, so far as an inspection of the record is concerned, that a number of counsel were employed by the defendant, and whose names appear from time to time in the papers of this case, that appellee is certainly entitled to an opportunity of knowing who is its opponent.

IV.

MOTION TO AFFIRM.

We have coupled the motion to dismiss with a motion to affirm as is authorized by the rules of this court, and its decisions. This court has repeatedly affirmed "where there is a sufficient color for motion to dismiss, the court will entertain a motion to affirm."

The Alaska, 130 U. S., 208.

And the cases cited in Rose's Digest, p. 185.

"Under subdivision 5, of Rule 6 of the Supreme Court, a motion to dismiss may be united with a motion to affirm, where it is manifest that the writ or appeal was taken for delay, or question on which jurisdiction depends is frivolous."

Rose's Digest, *supra*.

Citing:

Chanute City v. *Trader*, 132 U. S., 212.

It would be, we submit, a needless extension of this brief to insert herein further extracts from the record, or to repeat those already hereinbefore set forth. Even if this court could be held to have jurisdiction of this appeal upon the facts in this record, yet we submit that as practically all the principal legal questions presented are concluded by the first appeal; that as such propositions as are to be deduced from the assignments of error relating to the action of the court below in permitting or refusing amendments, granting continuance, suppressing testimony, are all fruitless, and not entertainable here; that as the action of the court below on the merits, maintaining the integrity of this contract, when the facts not only satisfactorily establish,—but the appellant did not even pretend to question, that the pressure was sufficient, the water furnished wholesome, and the rates reasonable,— is unassailable, the decree should be upheld. Upon what fact going to the merits can appellant base this appeal? We submit, not one. The action of the court in requiring the city to furnish an outlet for its sewage matter does not possess sufficient merit to justify an appeal here. The order in this case is in

its nature somewhat interlocutory; and be that as it may, the application for a hearing should be made in another court.

In view of all the facts and circumstances of this case, the duration of the litigation, the untenable character of the defenses, the absolute lack of proof, when issue is joined upon vital contentions, furnish a reason, we submit, for this motion to affirm.

Respectfully submitted,

MURRAY F. SMITH,
J. HIRSH,
Of Solicitors for Appellee.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1905.

No. 133.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANT,

vs.

THE VICKSBURG WATER WORKS COMPANY.

Rejoinder Brief for Appellee on Motion to Dismiss and Affirm.

I

We have received copies of the two briefs filed by counsel for the appellant, and in view of their references to the Constitution of the State of Mississippi, at this late date in the controversy, it may be pertinent and proper to make a brief response to their propositions relating to the question of jurisdiction. It is interesting to notice here that notwithstanding the appellant maintained most vigorously that there *was no* Federal question in this case, and has succeeded in prolonging this litigation for over four years, yet it now emphatically insists that there were a number of Federal questions in this case, and particularly asserts that the

learned court below necessarily decided a federal question involving said act of 1900 which is not res judicata.

Notwithstanding the lavish citation of authorities appellant fails to refer in any manner to the Anglo-American Provision Co. vs. Davis Provision Co. No. 2, 191 U. S. 306, cited in our briefs heretofore filed, and have not even attempted to raise an issue upon the propositions we advanced in our said briefs, first, that if this case had been decided against the appellee *on the* merits after it sustained the jurisdiction, the appellee would have no right of appeal; second, that defendant can occupy no better attitude, and having also sustained jurisdiction and procured an adjudication in its favor upon a Federal question, and then failed on the merits, could not prosecute an appeal from a decree against it on said merits; third, that when the Federal question is finally *adjudicated* it is eliminated from further consideration, and neither the plaintiff, nor the defendant, can prosecute an appeal to obtain a review of *that adjudication of such Federal question.*

The appellant therefore is driven to contend that the leaned court below in the rendition of its decree, decided some other Federal question, than that adjudicated in this case on the former appeal.

No one can successfully deny that not only was a *Federal* question *presented* in this case, but *that* question was adjudicated; and this court held in language so plain that he who runs may read "that the ordinance of the City of November 7th, 1900, whereby the Mayor was instructed to notify the Waterworks Company that the Mayor and Aldermen deny any liability upon any contract for the use of the Waterworks hydrants AND THE SUBSEQUENT ACTION OF THE CITY IN HOLDING AN ELECTION TO AUTHORIZE THE

ISSUE OF BONDS TO BUY OR CONSTRUCT WATERWORKS OF ITS OWN (Capitals ours) and in refusing to pay the amount due and payable under the terms of the ordinance do not present the mere case of a breach of a private contract to be remedied by an action at law, but disclose an intention and attempt BY SUBSEQUENT LEGISLATION OF THE CITY TO DEPRIVE THE COMPLAINANT OF ITS RIGHTS UNDER AN EXISTING CONTRACT (Capitals ours.)" And this court further maintained the remedial powers of a court of equity, in response to the suggestion, "that the bill did not disclose any actual proceedings on the part of the city to displace complainant's rights under the contract" by authoritatively defining these powers, and holding it "is one of the most valuable features in equity jurisdiction to anticipate and prevent a threatened injury—and in protecting the complainant from injuries which if inflicted would be wholly destructive of his rights." It seems needless to state that which are undeniable facts; first, that the city's authority to hold said election was solely conferred by the act of March 9th, 1900, second, that the adjudication of this court did not refer to any one right of the appellee alone, but to *the rights* of the appellee; and, third, when the city undertook to deprive the complainant of its rights under an existing contract it was not only seeking to deprive it of its hydrant rentals, but in its attempt to buy or construct waterworks of its own was inflicting injuries which would be wholly destructive of the appellee's rights.

The strenuous effort of the appellant seems to have but one end in view, and that is, to so emasculate the decision of this court, that it will prove ineffectual in securing to the appellee, that which was the gist and

the main basis of its entire controversy, relief from the inevitable bankruptcy which would result from the city's active competition in supplying water to its own inhabitants at such rates as would be prohibitory so far as the appellee is concerned; or in other words, engaging in the commercial pursuits of supplying water in open hostility to the appellee. When this case again reached the Circuit Court, the learned judge under the positive mandates of this court was compelled to recognize not only that the case presented a Federal question, but that question was, as stated by this court, that the ordinance and the proceedings of the city in holding an election to issue bonds to buy or construct waterworks of its own, contravenes that provision in the constitution of the United States which prohibits the impairment of the obligation of contracts, and he had no discretion in the execution of that mandate, and could not ignore its obligatory force, unless the city, to use the language of this court, "could point to some inherent want of legal invalidity in the contract, or to some such disregard by the waterworks company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract." The city wholly failed to find or point out such invalidity, or to introduce any proof authorizing the forfeiture of the contract, and the learned court, therefore, as it was bound to do, rendered a decree for the complainant, or appellee, sustaining said contract, and giving the complainant the relief to which it was entitled.

We think it is only necessary to repeat our contentions in our briefs, that the only "real and substantial claim" in this case, so far as relates to a Federal question, was expressly adjudicated by this court and the

court below strictly pursued the mandates of this court in the determination of that Federal question.

II

It is however insisted that the appellee has no right to this contract. This is not a Federal question, but we respectfully maintain that even this question has already been adjudicated as we have stated in our briefs, in the former appeal. But as appellant devotes several pages of its brief to the contention, "that a public service corporation cannot sell or bargain away its franchise or contracts," it is proper to insert here the Act of the Legislature of Mississippi in force when this contract was entered into in 1886, which appellant has wholly ignored or overlooked. We append the Act (1886, p. 50.)

CHAPTER XXVI.

AN ACT to extend the provisions of Chapter 38 of the Code of 1880 in relation to corporations and other associations, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That all corporations, except cities and towns and express, telegraph and railroad companies, may be created in the mode and manner and with all the rights, powers, privileges, and immunities as provided in chapter 38 of the Code of 1880.

SECTION 2. *Be it further enacted*, That all corporations created under this act and of said chapter 38, shall have, in addition to the powers, privileges and immunities granted in chapter 38 of the Code of 1880, the following rights, powers, privileges and immunities: That their capital stock shall be unlimited in amount and may be increased by the stock holders from time to time; that they may hold and own real and personal property to any

amount, may sell, exchange and encumber the same; that they may borrow money and secure the payment of the same by a mortgage or deed of trust upon their property and franchises; that they may issue their bonds and secure the same by a mortgage or deed of trust upon their property and franchises, and may sell, exchange, pledge or hypothecate such bonds, and have such other rights, powers and privileges as are necessary and proper to carry into execution the purposes of their organization.

SECTION 3. *Be it further enacted*, That in all actions brought by third persons against corporations created under this act, it shall not be a defence to such action that there was any defect or informality in the organization of such corporation.

Approved, March 7, 1882.

By this Act it is seen that corporations may mortgage their franchises and property, and as the most important franchise that the Vicksburg Water Supply Co. acquired from Bullock & Co. was the franchise or contract to erect, maintain and operate a system of water works, and to furnish at a stipulated price to the City of Vicksburg and its inhabitants an adequate supply of good wholesome water, that franchise or contract was necessarily subject to hypothecation under the laws of the State of Mississippi above set forth, and as a matter of fact gave value to the bonds secured by such hypothecation.

The Vicksburg Water Supply Company embraced said franchise or contract in its mortgage, the mortgage was foreclosed, the property purchased by the Vicksburg Water Works Co., the appellee, and thereby appellee acquired every right of S. R. Bullock & Co., the assignee, the Vicksburg Water Supply Co., which

included said contract or franchise; and to make assurance doubly sure, the Vicksburg Water Supply Co. expressly conveyed by quit claim deed the franchise or contract to appellee. All this appears in the opinion at the former hearing and was proven at the trial; and therefore all the arguments on this subject are now without pertinency.

III

The contract is also assailed because of the provision of the constitution of the State of Mississippi, being Sec. 178, Art. 7. "Corporations shall be formed under general laws only. The Legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and revocable and any that may hereafter be created whenever in its opinion it may be for the public interest to do so, PROVIDED HOWEVER THAT NO INJUSTICE SHALL BE DONE TO THE STOCK HOLDERS (Capitals ours)." If the Act of March 9, 1900, was the basis of the decision of either this court or the circuit court, then, as this court has judicial knowledge of the Constitution of the State of Mississippi, the adjudication of this court was made with that knowledge, and whether erroneous or not is not subject to criticism on the part of the appellant, and the decision of this court is now the law of this case. But we deny the proposition to which both counsel for appellant have devoted so much attention, that the Legislature of the State of Mississippi could impair this contract of November 18, 1886, even if it had attempted to do so. The contract was valid and binding both upon the City of Vicksburg and S. R. Bullock & Co., as adjudicated, we submit, by this court, for it was within the power of the city to make

and it was acted on for fourteen years. Upon the faith of that contract large outlays of money were made; an expensive plant was built; property was mortgaged; bonds issued secured by said mortgage and sold; and heavy and burdensome contractual obligations assumed by Bullock and his assignees. That contract was just as much property in every proper or legal sense as the plant of the Water Works Company. That property was vested in Bullock and his assignees, and the Legislature would have the same power to confiscate and take away the water works plant, as it would have the power to confiscate and take away said contract, the basis of the water works capacity to operate its plant or to serve the public. We apprehend no one would seriously contend that the Legislature could by any enactment despoil the Water Works Company of its plant, its pipes, its mains, its houses, and the debts due it by the inhabitants of the City of Vicksburg for water supplied to said inhabitants under said contract, aggregating many thousand dollars yearly. Yet it is here gravely maintained at considerable length, that the most valuable piece of property the Water Works Company owns, that which really gives it the right and the means to do business, can be purloined by the Legislature of the State of Mississippi under constitutional authority. Appellants argue this case as if the Vicksburg Water Works Company, under the Constitution of 1890, made a contract with the City of Vicksburg to supply it with water. It seems to be oblivious of the fact that this contract was made in 1886, four years before the constitution of 1890 was adopted, and was a binding obligation upon the City of Vicksburg long before all of its numerous counsel had appeared upon the scene of action. If the contract was good in Bullock and his

assignee for four long years, it was unassailable in the subsequent grantee since the constitution of 1890 was in force. If citation to sustain such a plain proposition of common honesty is required, it is to be found in United States vs. Union Pac. Ry., 160 U. S. page 1 and 33, wherein this court graphically proclaimed "it would not be competent for Congress under the guise of altering and amending the act in question to impose upon the Railroad Company duties wholly foreign to the objects for which it was created, or for which governmental aid was given. NEITHER COULD IT BY SUCH ALTERATION OR AMENDMENT DESTROY RIGHTS ACTUALLY VESTED, OR DISTURB TRANSACTIONS FULLY CONSUMMATED. (Capitals ours). We cite also from Rose's Digest: Vol. 1, p. 594.

"(a) Under reserved power to alter or amend a corporate charter, Legislature may make any alterations or amendments which do not defeat or substantially impair objects of grant or rights vested thereunder.—Holyoke Company v. Lyman 15 Wall. 522, 21 L. 133, Bk VII U. S. Notes, 928.

(c) Reserved power to alter, amend or repeal a corporate charter authorizes any amendment which will not defeat or impair the object of the grant, or any vested right, and which the Legislature may deem necessary to secure either that object, or any public right.—Close v. Glenwood Cemetery, 107 U. S. 476, 27 L. 408, Bk X U. S. Notes, 496.

(c) By reservation in law of 1831, State of Maine retained power to alter or repeal acts, corporate rights, privileges and immunities; but rights acquired which do not constitute part of contract of incorporation stand

upon different footings.—Maine Cent. R. R. v. Maine, 96 U. S. 510,511, 24 L. 836, Bk IX U. S. Notes, 470.

(e) The power of a Legislature to alter a charter authorizes any change not substantially impairing the objects of the grant, or any rights vested under it.—New York etc. R. R. v. Bristol 151 U. S. 597, 38 L. 269, Bk XII U. S. Notes. 507."

Some effort has been made to introduce into thi controversy another act which appears on page 35 of the brief of Mr. McCabe, being an extract from the laws of Mississippi of 1904. It is difficult to conceive how by any process of reasoning that case can be linked to this. The Act of 1904 is really an authority for appellee, for the Legislature of the State of Mississippi with due regard for fair dealing, good faith and common honesty, expressly provides in that act that it "shall not be construed so as to impose (impair) the effect or obligations of any valid or binding contract with any waterworks company * * * now existing or heretofore made." Therefore, in order to avail itself of said act the burden rests upon appellant to prove what it has unsuccessfully attempted to do here, that it had no valid or binding contract with the water works company. And finally it is also proper to note that the constitution of the State of Mississippi does not confer upon the legislature an unrestricted right to destroy a corporation, for its power is expressly limited by the proviso "*that no injustice shall be done its stock holders.*" Therefore, if this contract had been made in 1891, instead of 1886, after the constitution of 1890 was in force, and not before it was ever dreamed of, the legislature would have no power to have injured the stock holders and destroyed their property rights by extinguishing this contract.

IV

In conclusion, we think it proper to say we do not consider any of the questions presented by the appellant on the merits, because, we submit, that we have covered all such points in our former briefs, and if any of these propositions had any merit, the forum of relief is the Circuit Court of Appeals and not the Supreme Court of the United States.

Respectfully submitted,

S. S. HUDSON,
MURRAY F. SMITH,
J. HIRSH,
Attorneys for Appellee.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 133.

THE MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANTS,

vs.

THE VICKSBURG WATER WORKS COMPANY.

REJOINDER BRIEF FOR APPELLEE ON THE MERITS.

S. S. HUDSON,
MURRAY F. SMITH,
J. HIRSH,
Attorneys for Appellee.

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MAYOR AND ALDERMEN OF THE CITY OF VICKSBURG, APPELLANTS,

vs.

THE VICKSBURG WATER WORKS COMPANY, APPELLEE.

REJOINDER BRIEF FOR APPELLEE ON THE MERITS.

This honorable court having postponed the hearing of the motion to dismiss and affirm until the hearing on the merits, we deem it proper, although we have in our briefs on the motion discussed at some length the merits and made numerous extracts from the record, to briefly repeat, that upon every *material question* relating to the merits not only was appellee's contention sustained by the proof, but the appellant practically abandoned any effort to maintain its contentions in that respect. We submit, it was proved beyond successful denial.

FIRST.

THE QUALITY

Of the water was of the best character.

SECOND.

THE QUANTITY AND PRESSURE

In every respect satisfied the terms of the franchise.

THIRD.

THE RATES AND REGULATIONS

Were by the uncontroverted testimony shown to be reasonable, and for all practical purposes the appellant made no effort to dispute the fact thus established by proof, that they were reasonable.

FOURTH.

THE TITLE.

We have shown in rejoinder brief, page 5 *et seq.*, that under the acts of the State of Mississippi of 1882 (1882, p. 50) the franchise or contract which constituted the most valuable asset of the Vicksburg Water Supply Company, the immediate assignee of S. R. Bullock & Co., could be mortgaged; that it was mortgaged and the mortgage was foreclosed, and the franchise or contract bought at foreclosure sale by the appellee, and that, to strengthen its title so as to place it absolutely beyond question, the said Vicksburg Water Supply Co. transferred by quitclaim deed said contract or franchise to the appellee, all of which is set forth in the opinion of this court.

Fifth.

The Power of the City to Make Contract.

That the city had the power to make the contract for the erection and maintenance of the water-works system with an individual or corporation is clearly recognized by this court in the opinion on the first appeal; it also expressly results from the direct enactment of the legislature of the State of Mississippi authorizing such contract; and such contracts are in accord with the public policy of the State of Mississippi, and are sustained by the supreme court of Mississippi, as shown by the case of The Light, Heat & Water Company *vs.* City of Jackson, 73 Mississippi, p. 598; and the court will observe that in that case, as appears on page 606, the city of Jackson granted "to said company the exclusive right and privilege to have, maintain and operate the franchises granted by the charter of said company in said city for the period of twenty-five years from the date of the execution of this contract."

The later adjudication is John B. Reid *et al. vs.* Trowbridge *et al.*, 78 Miss., p. 542.

Sixth.

The Hydrant Rentals.

The obligation of the city to pay for the use of the hydrants during the contractual period, if the city had the power to make the contract, is not now seriously denied by the appellant, as we construe its argument, nor can it be successfully controverted. Under the assignments of error and the arguments of counsel, the right to these hydrant rentals must be regarded, we respectfully submit, as practically conceded. Mr. McCabe says (page 38 of his brief), if the city had the right to preclude itself, "then it must be held to have precluded itself only to the extent fixed by the contract."

SEVENTH.

THE AMENDMENTS.

The action of the court in refusing the amendments has been discussed at some length in our former briefs and we do not deem it necessary to again refer to them.

EIGHTH.

THE MINOR QUESTIONS,

Such as those relating to the extension of the sewer, do not affect the material controversy in this case, and could only, even if error was committed, result in the reversal of so much of the decree as contains the error.

NINTH.

THE OTHER MINOR QUESTIONS,

Such as motions for continuance, have been referred to at sufficient length, we submit, in our briefs and it is unnecessary to consider them further.

TENTH.

THE CONTRACT IS EXPRESSLY PROTECTED BY THE CONSTITUTION OF THE STATE OF MISSISSIPPI.

In addition to our argument based upon the constitution of the State of Mississippi and the adjudications of this court protecting vested rights (Rejoinder Brief, page 7 *et seq.*), we further submit that the constitution of 1900 expressly protects and *continues* this contract.

Schedule, section 279, expressly provides:

"ALL CAUSES OF ACTION AND RIGHTS OF INDIVIDUALS AND BODIES CORPORATE AND CHARTERS OF INCORPORATION SHALL CONTINUE." [Capitals ours.]

Thus conclusively showing that the framers of the *organic law* did not intend to license repudiation.

Eleventh.

The Issue Based upon the Term "Exclusive" Has Been Adjudicated.

The main contention of the appellant on the merits is presented in Mr. McCabe's brief, on pages 36–39, and by Mr. Bryson, on pages 51 to 70, both inclusive, and the entire argument on this subject on said pages involves the effect of the word "exclusive" in the franchise granted to Samuel R. Bullock & Company. We respectfully submit that this "is threshing over old straw." On the first hearing of this case, Mr. L. W. Magruder, as the counsel for the city, in his brief pressed upon the attention of this court the very issue upon which the appellant now demands a hearing. We make the following extracts from his brief. Page 11 he said: "We contend that said city was not empowered to grant to appellant the exclusive right to maintain and operate a system of water works."

Again: "If appellant's right be contravened in the premises, it must result from the building of the works, the result must come from the *exercise of the power* and not from the naked grant of such a power."

On page 13 he says:

(1.) "The validity of a claim of an exclusive privilege will be decided on the question of jurisdiction if the right is determinable by construction upon the face of the law."

(2.) "No exclusive privilege was granted to appellant."

Page 15: "But in cases such as this the real and single question as to whether any contract right exists at all lies upon the very face of the contract itself, which is set out from the necessity of the case by the appellant in its bill, then it would seem that the question so presented is one of jurisdiction to

be passed upon as such. NOTHING MORE CAN BE DONE BY WAY OF PLEADING OR PROOF TO EFFECT THE ISSUES PRESENTED AS TO THE VALIDITY OF APPELLANT'S CONTENTION FOR AN EXCLUSIVE PRIVILEGE. THE ISSUE IS COMPLETELY MADE UP. ALL THE LAW AND ALL THE FACTS ARE BEFORE THE COURT. NOTHING CAN BE ADDED TO THEM UPON ANY TRIAL. ITS SOLUTION RESTS ALONE UPON THE PROVISIONS OF THE LAW AND THE TERMS OF THE CONTRACT." [Capitals ours.]

Again, *ibid:* "If appellant has an exclusive right to maintain water works as provided in the contract, it is a question which can only be resolved by determining the extent of the municipal powers of said city under the act of the legislature authorizing the contract. Whatever rights the appellant has in this respect must be determined, *ex vi termini*, by the very terms of the statute."

Page 16: "The validity of its claim must be resolved upon the very face of the law which it says has been impaired. In such a case no good purpose can be served by remanding for trial to the court below the question of the validity of the appellant's contract based upon the interpretation of the statute. If upon the face of the statute and of the contract the appellant has 'no exclusive privilege,' if every fact necessary to its decision is now before this court, why should it not now be determined as a jurisdictional question? If the whole controversy may at once be settled by finding that the appellant has no exclusive privilege, it would be a tedious and costly delay to postpone the determination of that question and a trial upon its merits and a second appeal." It thus appears that the city itself demanded from this court an express adjudication, so as to thereby avoid further trial on the merits and a second appeal, and, as we understand the language of this court, the court responded to the request and held, as we have heretofore maintained, that the appellant then, appellee now, had, on the face of the pleadings, an unassailable con-

tract. But the counsel for the city was not satisfied with its own emphatic language above quoted, and on page 17 *again* insists: "If it shall appear clearly as a matter of construction that the exclusive grant to appellant was not authorized there would be no room to apply the constitution."

Page 21: "THE SOLE QUESTION BEFORE THE COURT AS TO THE IMPAIRMENT OF THE OBLIGATION OF APPELLANT'S CONTRACT IS WHETHER THE POWER OF THE CITY TO BUILD ITS OWN WORKS IS SUCH AN IMPAIRMENT." [Capitals ours.]

"The ordinance granting to appellant the exclusive privilege to maintain and operate a system of water works was to that extent illegal and void."

Page 24: "The franchise grant to the appellant, and whatever right it possesses under that contract for compensation for the use of its hydrants is not involved in this case, because whatever right it possesses in these respects can be enforced notwithstanding the city may build its own water works."

"Neither the acts of March, 1900, nor anything done in pursuance thereof by the city have the legal effect to any extent to impair any of the rights of the appellant under his contract *except the sole right to the exclusive privilege mentioned.*" And appellant cited, among other cases, Freeport Water Co. *vs.* Freeport City, 180 U. S., 598. The appellant then, the appellee now, pages 25 and 26 of its brief, said: "It is unnecessary to contend here that the word 'exclusive' or any other part of the contract would preclude the city from granting another franchise to a third party. The city is not attempting to grant another franchise, nor is any other third person offering to either supply the city or its inhabitants with water."

Page 26: "It can be asserted in this case, as in the Walla Walla case, that the plain intent of the franchise as shown not only from the use of the word 'exclusive,' but also from the context and from the condition of the contracting parties, was that the city should not compete with the complainant."

Thus it will be seen, as we have already contended in our former briefs, that the question now argued by appellant, based upon the word "exclusive" and its legal effect, as against the city itself was also the question urged upon this court upon the former appeal, and, as we contend, decided in favor of then appellant, now the appellee. It was in view of the arguments that we have quoted that the result announced was reached, and this court held:

"It cannot be seriously contended that under the act of March, 1886, authorizing the city to provide for the erection and maintenance of a system of water works and to contract with a party or parties to build and operate water works, and under the ordinance of the city of November 18, '86, providing for a supply of water to the city and its inhabitants, by contracting with Samuel R. Bullock & Co., their associates, successors and assigns, and the acceptance of said ordinance by Samuel R. Bullock & Co., no contract was entered into. THE SUBJECT-MATTER OF THE CONTRACT WAS IN THE POWER OF THE CITY TO MAKE; THE TERMS WERE EXPLICITLY SET FORTH IN THE ORDINANCE [capitals ours]; the works erected were approved by the city; and the respective obligations created by the contract were duly complied with without question or complaint for a period of fourteen years."

And again: "We think that the ordinance of the city of November 7th, 1900, whereby the mayor was instructed to notify the water works company that the mayor and aldermen deny any liability upon any contract for the use of the water-works hydrant, AND THE SUBSEQUENT ACTION OF THE CITY IN HOLDING THE ELECTION TO AUTHORIZE THE ISSUE OF BONDS TO BUY OR CONSTRUCT WATER WORKS OF ITS OWN, [capitals ours] and in refusing to pay the amount due and payable under the terms of the ordinance—disclose an intention and attempt by subsequent legislation of the city TO DEPRIVE THE COMPLAINANT OF ITS RIGHTS UNDER AN EXISTING CONTRACT: [capitals ours] and that therefore, unless the city can

point to some inherent want of legal validity in the contract, or to some such disregard by the water works company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the circuit court as presenting a Federal question." Under this decision the circuit court below maintained its jurisdiction and granted relief in accordance with the mandate of this court. The Walla Walla case and the Los Angeles case were specially referred to in the former appeal.

If the grant of the exclusive right to construct and maintain a water-works system for a period of thirty years conferred no rights as against the city, it seems to us that it would have been an idle ceremony to do what appellant's counsel protested in his brief should not be done, to go through the form of a trial, if the appellee had no rights to be protected by such trial. But this case was sent back to the court below with the express direction of this court with the formal language of the mandate for the court below to recognize the existence of the Federal question and to execute the will of this court as expressed in its decision.

We respectfully maintain that when the city granted to S. R. Bullock & Co. and assigns "the exclusive right and privilege—for a period of thirty years of erecting, maintaining and *operating a system of water works*," and granted the use of the streets and stipulated for the *free use* of water for certain purposes, and for *an appraisement of the water-works plant every ten years* in the event the city desired a plant, that the city by *express* grant, and not by *implication*, precluded itself from building any water works of its own during the limited period of thirty years, which measured the life of this contract. * * * Clearly, as is announced in the Walla Walla case, the city had the right to say that it would not erect a water-works system of its own within thirty years, and that statement can be made just as effective

by *one* word as by a hundred, and when the city inserted the word "exclusive" in this contract it expressly contracted, we submit, by the very use of the *word*, that it would not become a competitor itself of this appellee.

In the Walla Walla case it will be noticed that by the act of the Territory of Washington the city of Walla Walla, although authorized to provide a sufficient supply of water and grant the right of the use of the streets of the said city, yet the act conferring the authority expressly provided "that none of the rights or privileges herein granted shall be exclusive nor prevent the council from granting the same rights to others." Nevertheless, this court held valid and obligatory this provision of the contract with the Walla Walla Water Company: "And until such contract shall have been so avoided the city of Walla Walla shall not erect, maintain or become interested in any water works except the ones herein referred to save as hereinafter specified." This court further said: "Cases are not infrequent where under a general power to cause the streets of a city to be lighted or to furnish its inhabitants with a supply of water without limitation as to time, it has been held that the city has no right to grant an exclusive franchise for a period of years; but these cases do not touch upon the question how far the city in the exercise of an undoubted power to make a particular contract can hedge it about with limitations designed to do little more than bind the city to carry out the contract in good faith and with decent regard for the rights of the other party." In the case at bar there is an express provision in the contract authorizing the city of Vicksburg at the expiration of each period of ten years after the ordinance takes effect to purchase said system of water works, and we maintain that this is the measure of the city's rights so far as the acquisition of the water works is concerned during the period of thirty years.

Not a single case is cited by appellant, as we contend, which militates against this view. What new light has ad-

ditional counsel thrown upon this subject? We submit, none. And appellee is not contending that another party, *who is not a party to the contract*, cannot build.

We further respectfully submit that if the proof had shown that the rates for the city and its inhabitants had been extortionate (as averred by the city), and so unreasonable as to shock the conscience of the court, that might give some reasonable ground in a court of equity that the city should have the right to build a plant of its own to relieve the oppressed condition. But when we find the *uncontroverted proof* that the rates and regulations are without question reasonable both as to the city and its inhabitants, there is no reason for the complaint by the city to build a plant of its own.

In other words, when the rates are proven without question to be reasonable THE MONOPOLY IDEA IS ROBBED OF ITS NAME, and the city knew so well that the rates were so reasonable that there was no use to even try to disprove the fact. Under such conditions, together with the further fact that the water company was and had been a financial failure for the long period of over fourteen years after the construction, and thereby necessitated the foreclosure of the first-mortgage bonds on account of default in interest, we submit, the city should not be allowed to repudiate its solemn contract that it would not build a water-works plant of its own during the life of the contract. If the city desires a plant of its own during the life of the contract, she has provided herself with a way to get it, *by a fair way*—the appraisement of the present plant. This can be done within the next twelve months, which is a much shorter time than she could build one.

The only cases cited by appellant that we think at all pertinent to be considered are those cases decided by this court *subsequent* to the decision of this court on the former appeal, because every other case cited decided prior to that

time by every rule of construction is necessarily precluded and disposed of by the former appeal.

We will notice, therefore, only such subsequent cases. Mr. McCabe collected them together, without citations therefrom, on page 37 of this brief. They are—

Skaneateles W. W. Co. *vs.* Skaneateles, 184 U. S., 354;
Knoxville W. W. Co. *vs.* Knoxville, 189 U. S., 434;
Helena W. W. Co. *vs.* Helena, 195 U. S., 383;
Bienville W. W. Co. *vs.* Mobile, 186 U. S., 212; and
S. W. M. O. Lt. Co. *vs.* Joplin, 191 U. S., 150.

In addition to these Mr. Bryson refers to Oshkosh Water Works Co. *vs.* Oshkosh, 187 U. S., 437.

"The positive authority of a decision," as announced by Chief Justice Marshall in Ogden *vs.* Saunders, 12 Wheat., 213, "is coextensive only with the facts upon which it is made," and we will briefly refer to the *facts* in the cases above mentioned.

In the Skaneateles case it appears "on April 5th, 1887, the village of Skaneateles granted a franchise to the water works company to maintain and operate within the village a system of water works for furnishing pure and wholesome water to the village and its inhabitants, under which the company constructed its works, and on February 1st, 1891, contracted to supply water to the village and its inhabitants for the period of five years. At the expiration of the term of this contract some differences arose about the terms of its continuation, which resulted in the construction of an independent system of water works by the village authorities."

This court held upon this state of facts, among other things, that the water company "acquired no contract right, express or implied, to an exclusive privilege of using the streets of the village or supplying it with water."—"That when the contract for five years had expired there was nothing in the State legislation upon which to base an im-

plied contract." But in the case at bar there was a contract giving an exclusive privilege, not only to maintain, but to operate, a system of water works for thirty years.

In Bienville Water Supply Co. *vs.* Mobile, 186 U. S., p. 212, 218, this court says: "In the first place, the plaintiff did not receive the exclusive right to supply Mobile with water. The proviso in the charter reserved to the State the power to charter other companies for such purpose. Obviously the legislature contemplated the fact that in the future other sources of supply and other companies might be necessary in order to furnish an adequate supply for the growing city and reserved to itself the right to make such provision as it should deem expedient therefor.

The court held "that the plaintiff took this charter with notice that it was not given the exclusive right of supplying the city of Mobile with water, and it had not at the time of the transactions referred to in the pleadings obtained that which its charter before amendment purported to authorize it to obtain, to wit, an exclusive right to all the sources of supply in the county." The court said, on page 218: "The plaintiff had not at the time of these transactions obtained the Stein franchise for obtaining water from Three-mile creek, and could only claim an exclusive right of obtaining water from other sources of supply within the county of Mobile."

It is also to be noted that under the constitution of Alabama a grant of a monopoly is forbidden (page 223), and by a separate section of the constitution it is affirmatively declared that the legislature shall pass no act making an irrevocable grant of special privileges or immunities.

The constitution of the State of Mississippi at the time this contract was entered into contained *no such* provision; in other words, duly authorized contracts were *not* revocable. Besides, under the constitution of the State of Mississippi, section 279, it is expressly provided "all causes of action and rights of individuals and bodies corporate and of the

State and all charters of incorporation shall continue." Section 16 provides "*ex post facto* laws or laws impairing the obligation of contracts shall not be passed." This same section is embodied in the constitution of the State of Mississippi of 1869.

In Knoxville W. W. Co. *vs.* Knoxville, 189 U. S., p. 434, the question of the exclusive privilege therein granted to construct water works was not considered by the court. The only point decided was the effect of an agreement on the part of the company "to supply private consumers at not exceeding five cents per hundred gallons." In view of the fact that the city subsequently to said contract passed an ordinance reducing the price of water to private consumers below that rate, the court said, page 436: "The trouble at the bottom of the company's case is that the supposed promise of the city upon which it is founded does not exist. If such a promise had been intended it was far too important to be left to implication."

In form the words of this part of the instrument are the words of the company alone. They occur in the part of the contract which sets forth the company's undertakings, and not the part devoted to the promises of the city or that which contains the still later mutual agreements; they are the words of a company which was notified by the act which called it into being of the power expressly conferred upon the city "by ordinance to regulate the price of water" which the company might supply. People who have accepted, as experience shows that people will accept, a charter subject to such liabilities cannot complain of them nor repudiate them, nor can the company which they have formed.

In Joplin *vs.* Southwest Missouri Light Company, 191 U. S., p. 150, it appears that the city of Joplin on October 7, 1891, granted "the right to erect and maintain an electric light plant to certain persons, naming them, their successors and assigns, for a period of twenty years." The ap-

pellee is the successor of the original grantees. In March, 1899, the city issued bonds to the amount of thirty thousand dollars "for the purpose of erecting an electric light plant to be owned, controlled and operated by the city."

It was contended in that case that as the city had the choice to make a contract with private individuals, or to build an electric plant of its own, that having made a contract with private persons "the city contracted not to build works of its own." The court said, pages 156 and 157: "The appellee concedes as we have seen that it has no exclusive right and yet contends for a limitation upon the city which might give it (the appellee) a practical monopoly. Others may not seek to compete with it and if the city can not the city is left with a useless potentiality while the appellee exercises and enjoys practically an exclusive right."

It is readily perceived there is no similarity between that case and the one now under consideration. In *this* case the city expressly granted the exclusive privilege not merely to supply water for the use of the inhabitants of the city, but exclusively to *construct and operate* a system of water works. In the Joplin case there was practically only a privilege given to the electric light company to supply private lights for the use of the inhabitants, and to construct an electrical plant and erect poles.

In Oshkosh Water Works Co. *vs.* Oshkosh, 187 U. S., p. 437, this court decided: "The legislature may not withdraw all remedies, and thus in effect destroy the contract; nor impose such new restrictions or conditions as would materially delay or embarrass the enforcement of rights under the contract, according to the course of justice as established when the contract was made. Neither could be done without impairing the obligation of the contract. But the legislature may change existing remedies or modes of procedure, without impairing the obligation of contracts, if a substantial or efficacious remedy remains or is provided, by means of which a party can enforce his rights under the contract."

Helena Water Works Co. *vs.* Helena, 195 U. S., p. 383, we submit, is really an authority for the appellee. This court held: "Under the constitution and laws of Montana a grant by a municipality to a water-works company of the right to erect and maintain water works WHICH EXPRESSLY DECLARES THAT IT IS NOT EXCLUSIVE, DOES NOT RAISE AN IMPLIED CONTRACT THAT THE GRANTOR WILL NOT PROVIDE ITS OWN WATER SUPPLY DURING THE TERM OF THE FRANCHISE." [Capitals ours.]

It will thus be seen that in the Helena case *not only was there no implied agreement* to grant an exclusive right, but there was an *express stipulation* that the grant should not be exclusive, while in this case the *city expressly makes* the grant exclusive. The reasoning of the court is also applicable here as we construe it. This court, after referring to certain clauses of the contract, says, p. 391: "If these sections can be construed to amount to a contract between the city and the company, binding the city to take its entire supply of water from this company for five years, which would be broken by the erection or building of a plant by the city to supply itself with water, it had expired before the beginning of this suit and the contract as it existed after the expiration of the term named in section 6 must be found in other sections of the ordinance. The contention is that as by section 26 the water company was bound during the term of the agreement which it is claimed, is twenty years, to provide all the inhabitants of the city, whatever their number, with a water supply, this contract will be impaired and its benefit to the company destroyed if the city should erect an independent plant of its own."

The court seemed to concede the strength of this position, but says further: "But in our view, this section must be read with section one, which requires the company to furnish water to such inhabitants of the city as desired to purchase the same, or to take water from the company beyond the term of five years, expressly provided in section 6.—

There is nothing in section 26 nor in section one undertaking to bind the inhabitants of the city to take water from the company.—Properly construed, we think this ordinance shows an agreement upon the part of the company to furnish water to the inhabitants of the city at not exceeding certain maximum rates, and to the city itself, upon terms to be agreed upon, made definite, as far as the city was concerned, for the term of five years. As thus interpreted, we do not find anything in this contract that prevents the city, CERTAINLY AFTER THE EXPIRATION OF FIVE YEARS, FROM CONSTRUCTING ITS OWN PLANT. [Capitals ours.]

We maintain here that the city has by the use of the word "exclusive" precluded itself from building a water works, so far as it is concerned, during a period of thirty years, nineteen of which have already expired, and it is admitted that *after* the expiration of the thirty years appellee would have no exclusive right to furnish the city with water, and the city would then have the right to build its own water works.

We have thus reviewed the main cases upon which the appellant relies, and we respectfully contend that there is practically no resemblance between the facts presented by those cases and the one at bar, and, therefore, they cannot be regarded as authorities sustaining the appellant's contention.

A recent discussion of the respective rights of a municipality and a water works company when an exclusive privilege is granted is presented in Farmers' Loan and Trust Company *vs.* City of Sioux Falls *et al.*, decided by the circuit court of appeals, eighth circuit, March 31, 1905, 136 Fed. Reporter, 721–729. The court said: "It is difficult to see the force of the contention that on account of once making a contract with the plaintiff for twenty years the city irrevocably bound itself by an implied contract never to construct and maintain a water-works system of its own. While it is doubtless true that the erection of such plant by the city

will render the property of the water company less valuable, yet the city was not bound by the contract to refrain from exercising its powers to construct and maintain water works after the expiration of the twenty-year period provided in the contract. The contract by its terms ceased to have effect after April 9, 1904, and the subsequent construction and operation of water works by the city for its own benefit and the benefit of its citizens would not, we think, be a violation of any of the express or implied provisions of the contract. The city undoubtedly had the power by an express contract to renounce its authority to construct and maintain water works itself during a time during which it would be proper and lawful to grant the privilege to a third party. Walla Walla *vs.* Walla Walla W. Co., 172 U. S., p. 1. Recognizing this rule the city treated the contract as a binding contract upon it for twenty years. In its answers both to the bill and the cross-bill it is alleged that the city had no intention of operating the system of water works which it proposed to build until after the expiration of the contract between the city and Kuhn and for the full term of twenty years both the city and the water company have performed their several obligations under the contract."

If this case presented a question whether the city of Vicksburg would have a right to build water works *after* the expiration of the thirty years, there would have been no litigation instituted in the circuit court of the United State for the southern district of Mississippi. But the city of Vicksburg did not do as the city of Sioux Falls did, wait until the end of the contractual period before it undertook to annul and defeat its own solemn franchise, but after receiving for nineteen long years the benefits of the contract securing it fire protection, free water for certain purposes, and securing for its inhabitants good wholesome water it cannot now, we contend, even if this contention had not already been sustained by this court, ignore the term of its own contract wherein

it is excluded from constructing a water works of its own and destroy the value of appellee's property by entering into active competition with it and thus not only prevent it furnishing the city with water, but to all practical intent and purpose by forcing it into bankruptcy deprive it even of the benefit of the hydrant rental.

We do not deem it necessary to review the cases cited by appellee from Rhode Island and Minnesota, for we submit that the doctrine maintained in the Walla Walla case, 172 U. S., is decisive of the question here involved, even if it could be held that that question was not adjudicated on the former appeal in this case, which we respectfully maintain was. Mr. Cook in his very recent work on Corporations, fifth edition, page 2760, says: "Where a city has power to construct its own water works, or to contract with a company, and it makes a contract, it cannot then construct its own works, its power being exhausted," citing Troy Water Company *vs.* Borough of Troy, 200 Pa. St., 453 (1901). Again on page 2761 he says: "Where a municipality breaks its contract with a water works company for a supply of water and erects its own works it is liable in damages sufficient to make the company whole for the breach."

Twelfth.

The Interest of Appellee in This Contract.

We have considered at some length in our former briefs the facts in this case which relate to the merits, and that upon final hearing the appellant abandoned in effect every defense involving the consideration of the quality of the water, the character of the pressure, and the reasonableness of the rates. We have also referred to the act of 1904 and the provisions of the constitution of 1890 maintaining that as this contract was valid in Bullock it is valid in Bullock's assigns and protected even by the act of 1904 from assault and protected by the decisions of this court, which we also quoted, and it is further protected by section 279 of the con-

stitution of the State of Mississippi, which provides: "All writs, actions, causes of action, proceedings—and rights of individuals and bodies corporate—and charters of incorporation shall continue."

But the appellant in its eagerness to secure *some relief* has persistently argued that the appellee had parted with its interest in this contract *pendente lite*, and the effect of the argument, therefore, is that, notwithstanding the Federal court *has jurisdiction*, the contract *is valid*, that the city is *bound by it*, and that the Vicksburg Water Works Company acquired *it*, yet, on account of some transaction between the Vicksburg Water Works Company and the City Water Works and Light Company of Dakota, the cause should have been decided adversely to appellee. We have devoted some attention to this proposition in our discussion of the second assignment of error in our former brief, pages 20 *et seq.* We will briefly repeat our contention. The appellant ignores its own deliberate agreement made at the January term, 1904, on its own application, in conjunction with appellee, to try this case at the May term, 1904, at Jackson, Mississippi. It deliberately fails to notice the decisions of this court to which we have referred in our discussion on the first assignment of error, particularly the case of Chapman *vs.* Barney, 129 U. S., 167, wherein this court upheld the right of the court below to substitute a *new sole plaintiff* in place of a sole original plaintiff, which we submit is clearly authority to sustain the act of the court below in *retaining* the sole original plaintiff. But appellant by this *argument* places itself in the indefensible attitude, we submit, of deliberately and solemnly pleading *a fact* as a defense in the court below and seeking to ignore it by a mere argument. On pages 111–112 of the record the court will see that the appellant plead, and this plea has never been withdrawn from the record, in substance and effect that the City Water Works and Light Company *never* purchased the property of the Vicksburg Water Works Company, does not *own any of its rights*, nor has any interest whatever in the subject matter of this suit. This is its own

deliberate plea, solemnly attested by the signature of its counsel, and, until it is withdrawn from the record, is absolutely binding and conclusive upon the appellant. We submit that no litigant can be permitted to take one position in the court by its plea, and then seek to destroy its effect by its argument. If there is anything in the doctrine of estoppel, this appellant is forever estopped to make the point that a company which it solemnly declared had no interest in the litigation can defeat this appellee merely because the appellant in its brief insists that it ought to be made a party. We further submit that this is a case of a mountain laboring, with the mythological result. What the appellee wanted and what the court granted was a trial on its merits. What the appellant seems to want is to avoid all the way through this litigation just such a trial, and now, at the last moment, it proclaims: "You are out of court because at one time there were negotiations between the Vicksburg Water Works Company and the City Water Works and Light Company," which the appellant itself proclaims was without avail. The appellant demanded in effect that the Vicksburg Water Works Company should remain the sole complainant, and when it is accommodated it now complains. The only practical interest that the city could have in the negotiation between the Vicksburg Water Works Company and the City Water Works and Light Company was to be protected from needless litigation and from the payment of the hydrant rental to two different parties. Again, the city maintained that the Dakota Company had no interest in the litigation. The Vicksburg Water Works Company acceded to that proposition. The Dakota Company admitted that proposition by retiring from the litigation. The City Water Works and Light Company could set up no claim after such conduct to any rights against the city involved in this litigation. If the contract is valid and indefeasible and vested in the Vicksburg Water Works Company, as we contend, then it was a valuable

property right which could be hypothecated and sold by it. But whether that be true or not, the city certainly is unharmed until the City Water Works and Light Company maintains a claim to the contract. If that event occurs, and it cannot occur unless there is some further negotiations between the parties, because the City Water Works and Light Company is estopped to make any claim by its own act in withdrawing from the litigation, the city's rights are in no respect impinged. If the contract is valid, as we have maintained, between the Vicksburg Water Works Company and the city, all that is necessary for the city to do is to comply with its terms, so far as the Vicksburg Water Works Company is concerned. Should any other claimant appear, its rights can then be determined, but we think we may be permitted to respectfully say that it is a singular proposition for appellant to maintain, after having unequivocally put itself on record denying the right of the Dakota Company to any interest in this litigation, and having even maintained in the supplemental answer, which it was not permitted to file, that the Vicksburg Water Works Company could not discharge its obligations to the city and assign its franchise to any other company, that *the Vicksburg Water Works Company* have absolutely no *rights in the premises*, and must go hence without relief.

The attempt to maintain by argument that appellee is estopped to impeach the validity of the act of 1900 because Mr. McFarland, the former superintendent of the Vicksburg Water Supply Company, after the execution of the mortgage under which the appellee claims, favored or contributed to the passage of the act is, we contend, so absolutely without merit that any discussion is needless.

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Murray F. Smith,
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Attorneys for Appellee.

Supreme Court of the United States.

No. 133.—October Term, 1905.

The Mayor and Aldermen of the City of Vicksburg, Appellant, *vs.* The Vicksburg Waterworks Company.	Appeal from the Circuit Court of the United States for the Southern District of Mississippi.

[May 21, 1906.]

Mr. Justice Day delivered the opinion of the Court.

This case was before this court at the October term, 1901, and is reported in 185 U. S. 65. It was then here upon the question of jurisdiction, and it was held that it presented a controversy arising under the Constitution of the United States, such as gave the Circuit Court jurisdiction. There was no diversity of citizenship, and the bill was filed by the Vicksburg Waterworks Company, a corporation of the State of Mississippi, against the Mayor and Aldermen of the City of Vicksburg, a municipal corporation of the same State. In view of the full statement of the contents of the bill and the amended bill in the case, as reported in 185 U. S., it is unnecessary to repeat it. On the present appeal a motion to dismiss or affirm was made, which was passed, to be heard with the merits. We regard the decision of this court, when the case was here at the former term, as settling the question of jurisdiction, and affirmatively determining that upon the bill and amended bill the complainant alleged a case which involved the application of the Constitution of the United States and appealable to this court, within section 5 of the act of March 3, 1891, as amended. (26 Stat. 827.)

The suit was brought by the Waterworks Company, claiming an exclusive right as against the city under a contract with it for the construction and maintenance for a period of thirty years of a system of waterworks, which exclusive contract, it was alleged, would be practically destroyed if subjected to the competition of a system of waterworks to be erected by the city itself, which was in contemplation under authority of an act of the legislature of Mississippi, authorizing the Mayor and Aldermen of the City of Vicksburg to issue bonds to the amount of $375,000 to purchase or construct a waterworks system and a sewer system, and for certain other purposes. That act, among other things, required the vote of the electors of the city upon the question of issuing bonds and constructing or buying waterworks, an election was held, and it was voted by a majority of the votes cast that the city should issue bonds to the sum of

$150,000 to purchase or construct waterworks for the city. A resolution was passed by the municipal authorities instructing the Mayor and Aldermen to notify the Waterworks Company that liability was denied upon the contract for the use of the waterworks hydrants, and that from and after August, 1900, the city would pay a reasonable compensation for the use of said hydrants. A bill was filed in the Equity Court in Warren County, Mississippi, averring that the original contract to which the Waterworks Company claimed to have succeeded was null and void; that the Mayor and Aldermen had exceeded their powers in making the contract for thirty years; that rates charged to consumers were exorbitant and illegal; that the Mayor and Aldermen at a meeting held on November 5, 1900, had resolved that they no longer recognized any liability under said contract; that the Vicksburg Water Supply Company (a former holder of said contract) and the complainant had no rights in said contract, and the city was entitled to have the same cancelled and annulled. And it was held in 185 U. S. that the facts taken together presented something more than a case of mere breach of private contract, and disclosed an intention and attempt by subsequent legislation of the city to deprive the company of its rights under the existing contract, and it was said: "Unless the city can point to some inherent want of legal validity in the contract, or to some disregard by the Waterworks Company of its obligations under the contract as to warrant the city in declaring itself absolved from the contract, the case presented by the bill is within the meaning of the Constitution of the United States and within the jurisdiction of the Circuit Court as presenting a Federal question." And it was further held that it was a valuable feature of equity jurisdiction to anticipate and prevent threatened injury, and the conclusion was reached that the allegations of the bill made a case for an injunction. The case was thus brought within section 5 of the act of March, 1891, as one in which the appeal is directly to this court. See also upon this point *Penn Mutual Life Insurance Co.* v. *Austin*, (168 U. S. 685.) The motion to dismiss will be overruled.

Upon the case going back to the Circuit Court an answer was filed raising issues as to whether the complainant had accepted and performed the agreement in their contract to supply water to the city, and denying the right of the complainant to have and to own the contract and the authority of the city to make an exclusive contract, and detailing other matters not necessary to further set forth.

Certain questions of fact as to the character of the water supplied by the complainant, the pressure maintained and similar questions were decided by the Circuit Court in favor of the appellees. An examination of the record makes it sufficient for us to say that we find no reason for disturbing the conclusions of the Circuit Court upon these questions.

The decree in the court below was in favor of the Waterworks Company, maintaining its right to the contract for hydrant rentals and enjoining the city, during the period of the contract, from constructing a waterworks system of its own, and requiring the city to construct a sewer for the disposal of house sewage from the city.

The assignments of error necessary to be considered are:

1. As to the alleged error of the court below in permitting a corporation known as the City Waterworks and Light Company, which had intervened in the case, to withdraw from the files its original bill in the nature of a supplemental bill, and striking out certain testimony which had been taken concerning the same.

2. In enforcing the contract with the city in favor of the complainant and restraining the city from erecting waterworks of its own during the term covered by the contract with the complainant.

3. In requiring the construction of the sewer by the city.

We shall proceed to notice these in the order named.

The City Waterworks and Light Company, on December 2, 1903, filed its petition praying to be admitted as a party complainant in the cause, and set up that it was the owner of the contract sued upon. To this petition the city answered, denying that the City Waterworks and Light Company had purchased, by deed or otherwise, or owned the property, real and personal, of the complainant the Vicksburg Waterworks Company, and denying that the City Waterworks and Light Company had any interest in the subject matter of the suit or should be admitted as a party complainant therein. The City Waterworks and Light Company then filed its original bill in the nature of a supplemental bill, on May 5, 1904, after the city had denied that it had any interest in the suit. On May 13, 1904, it filed a motion asking leave to withdraw its petition and bill from the files, which motion was granted by the court, and the motion of the Vicksburg Waterworks Company to withdraw from the files its written consent to the filing of the bill was also sustained, and the court granted the withdrawal of the petition, bill, exhibits and written consent. Thereupon the city offered a supplemental answer, and asked the court for leave to file the same. This answer made allegations setting forth the transfer of the contract to the City Waterworks and Light Company, and asked for a continuance of the cause, with leave to take testimony to support the averments of this supplemental answer. The court, on the same day, May 13, 1904, overruled the city's motion for leave to file the supplemental answer and for continuance with leave to take testimony in support thereof, and proceeded to hear the case upon the original pleadings and proofs. It also permitted the withdrawal of certain testimony referring to the City Waterworks and Light Company and the transfer of the contract to it. In view of the action of the court upon the pleadings as to

the City Waterworks and Light Company, this testimony had become immaterial.

In the action of the court just recited we can find no ground for a reversal. The City Waterworks and Light Company had come into the case claiming an ownership of the contract, which was denied by the city; certain testimony was filed concerning this claim of the company. We think it was discretionary with the court to permit the withdrawal of these pleadings and the suppression of this testimony, and it was likewise within its discretion to permit or deny a further answer by the city setting up the alleged transfer of ownership. These matters, except in cases of gross abuse of discretion, are within the control of the trial court. (*Chapman* v. *Barney*, 129 U. S. 677, 681; *Dean* v. *Mason*, 20 How. 198, 204.)

The principal controversy in the case is as to the correctness of the decree of the court below restraining the city from erecting waterworks of its own within the period named in the contract, which decree proceeded upon the theory that the city had excluded itself from erecting or maintaining a system of waterworks of its own during that period. The contract for the construction of the waterworks was originally made on November 18, 1886, by an ordinance of that date, granting to Samuel R. Bullock & Company, their associates, successors and assigns, the right and privilege to construct a waterworks system in the city of Vicksburg, for the period of thirty years from the date of the ordinance. Section 1 of the ordinance provided that, in consideration of the public benefit to be derived therefrom, the exclusive right and privilege was granted for the period of thirty years from the time the ordinance took effect, to Samuel R. Bullock & Company, their associates, successors and assigns, to erect, maintain and operate a system of waterworks in accordance with the terms of the ordinance, and of using the streets, alleys, etc., within the corporate limits of the city, as they then existed or might thereafter be extended, for the purpose of laying pipes and mains and other conduits, and erecting hydrants and other apparatus for the obtaining of a good water supply for the city of Vicksburg and for its inhabitants, for public and private use. There was a stipulation for certain hydrants for the term of thirty years at an annual rental of $65.00 each, and it was provided that Bullock & Company, their associates, successors and assigns, might procure the organization of a waterworks company and assign their rights and privileges under the ordinance to such corporation. It is disclosed in the record that Bullock & Company procured the organization of a waterworks company, the Vicksburg Water Supply Company, which company executed a mortgage to the Farmers' Loan & Trust Company of New York, which included "All of its real and personal property, goods, chattels, owned now or which may hereafter be acquired by it, including its land, rents, water-

works, buildings, pump houses, stand pipes, reservoirs, machinery, pipes, mains, hydrants, apparatus and equipments, situated in the city of Vicksburg, county of Warren, State of Mississippi, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, tolls, rents, issues, income, profits accruing therefrom; also all and singular the corporate franchises, privileges, rights, liabilities which the Water Company now has and can exercise, or shall hereafter acquire and possess, and also all the estate, right, title, interest, property, possessions, claim and demand whatsoever, as well in law as in equity, of the Water Company, of and to the property above described or hereafter to be acquired, and each and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above granted and described premises with the appurtenances unto the trustee and its successors forever." Upon the foreclosure of this mortgage the property was bid off by M. O. Crumpler on the 8th day of August, 1900. He assigned his bid to the Vicksburg Waterworks Company, complainant in this case, and the Vicksburg Water Supply Company on October 18, 1900, by a quitclaim deed, conveyed all the property described in the deed of trust to the Farmers' Loan & Trust Company, to the Vicksburg Waterworks Company.

A preliminary question is made that the Vicksburg Waterworks Company did not acquire title to the contract rights by virtue of these proceedings. But we are cited to an act of the legislature of Mississippi, approved March 7, 1882, (Laws of 1882, p. 50,) which upon its face is broad enough to authorize such corporations to borrow money and secure the payment of the same by mortgage or deed of trust upon their property and franchises, and we think the mortgage in question would include the contract rights of the Vicksburg Water Supply Company, and that they would pass by the sale and subsequent quitclaim deed to the Vicksburg Waterworks Company. Where a company is authorized to mortgage its franchises and rights, these may be sold and the purchaser acquire title thereto at foreclosure sale, although the corporate right to exist may not be sold. (*Memphis R. R. Co.* v. *Commissioners*, 112 U. S. 609.) The power to mortgage the privileges and rights of the corporation must necessarily include the power to bring them to sale to make the mortgage effectual. (*New Orleans etc. R. R. Co.* v. *Delamore*, 114 U. S. 501, cited and followed in *Julian* v. *Cent. Trust Co.*, 193 U. S. 93, 106.) We think the mortgage in this case covered and the decree passed the contract rights given originally to the Vicksburg Water Supply Company by the ordinance of November 18, 1886.

It is further urged that the Vicksburg Waterworks Company was organized after the taking effect of the Constitution of Mississippi of 1890, which provided: "Sec. 178. Corporations shall be formed under general laws

only. The legislature shall have power to alter, amend or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interests to do so; provided, however, that no injustice shall be done to the stockholders." And it is insisted that the subsequent legislative authority given to the city to issue bonds and build its own waterworks amounted to a repeal of the exclusive feature of the grant in the ordinance of 1886, if any it contained. We are cited in support of that proposition to the case of the *Hamilton Gas Light & Coke Co.* v. *City of Hamilton*, (146 U. S, 253,) considering the provisions of the constitution of Ohio as to altering or revoking corporate privileges. But we think the right of the Vicksburg Waterworks Company was acquired under the foreclosure and sale of the contract rights conferred in the ordinance of 1886 and covered in the mortgage, as we have stated. Furthermore, the Mississippi constitution contains this provision, which is not in the Ohio constitution considered in the Hamilton case, namely, "Provided, [in exercising the right of amendment or repeal of a charter] no injustice shall be done to the stockholders." If it be true that the complainant below had a binding contract excluding competition by the city in furnishing a water supply for the period of thirty years, we think it would be a palpable injustice to the stockholders to permit the competition of the city by new works of its own; which, whether operated profitably for the municipality or not, might be destructive of all successful operation in furnishing water to consumers by the private company.

Coming directly then to the question whether this is an exclusive contract, the question resolves itself into two branches. Had the city the right to make a contract excluding itself? And, if so, has the contract now under consideration that effect? The Legislature of the State of Mississippi on March 8, 1886, in the charter of the city of Vicksburg, among others, gave to the city the following powers: "To provide for the erection and maintenance of a system of waterworks to supply said city with water, and to that end to contract with a party or parties who shall build and operate waterworks." The question is now, not whether the city might make a contract giving the exclusive right as against all third persons to erect a system of waterworks, but whether it can, in exercising this legislative power, exclude itself from constructing and operating waterworks for the period of years covered by the contract. It is said the Supreme Court of Mississippi has denied this power, and we are referred to *Collins* v. *Sherman*, (31 Miss. 679;) *Gains* v. *Coats*, (51 Miss. 335,) and *Greenville Waterworks* v. *City of Greenville*, (7 So. Rep. 409.)

We do not think any of these cases decisive of the point. In *Collins* v. *Sherman*, it was held that the charter granting the right to a turnpike and ferry company to maintain a ferry upon a particular river, which con-

tained no grant of an exclusive right, did not prevent the legislature from afterwards incorporating another company authorized to establish a turnpike and ferry upon the same river and upon the same line of travel, although the establishment of the latter company might materially impair the value of the franchise granted to the first company. The cases were cited and the general principles stated that exclusive privileges could not be granted by implication; there was no attempt to make the first franchise exclusive in that case. In *Gains* v. *Coats*, it was held that the act in question did not confer upon a certain corporation the exclusive privilege of weighing cotton; that there was nothing in the charter indicating any intention to confer an exclusive right, and many cases were cited, including a number from this court, to the effect that exclusive privileges are not to be granted by implication. In *Greenville Waterworks* v. *City of Greenville*, the city of Greenville had made a contract with the Greenville Waterworks Company to build a system of waterworks by a certain time, but the company had failed to comply with the contract, the time was extended and the company again defaulted. The city thereupon cancelled the contract and made a new contract with the Delta Waterworks Company. Then the Greenville Waterworks Company filed a bill to enjoin the city and the other company from carrying out the contract and prayed for a specific performance of its contract with the city. The court held that there was no power given by the charter of the city of Greenville to grant a monopoly for a long series of years for supplying the city and its inhabitants with water. The question whether the city could exclude itself in such a contract as we have now before us was not met or passed upon. But if the doctrine of Mississippi were otherwise, and with due respect to which the decisions of its highest court are justly entitled, it has been frequently held, in passing upon a question of contract, in circumstances such as exist in this case, involving the constitutional protection afforded by the Constitution of the United States, this court determines the nature and character thereof for itself. (*Douglas* v. *Kentucky*, 168 U. S. 488.) And we think the question of the power of the city to exclude itself from competition is controlled in this court by the case of *Walla Walla* v. *Walla Walla Waterworks Company*, (172 U. S. 1.) In that case the city charter of Walla Walla provided, section ten, that no exclusive grant should be made nor should prevent the council from granting the right to others, and section eleven provided: "The city of Walla Walla shall have power to erect and maintain waterworks within or without the city limits, or to authorize the erection of the same for the purpose of furnishing the city, or the inhabitants thereof, with a sufficient supply of water." The contract was made for twenty-five years. The grant was not made exclusive to the Waterworks Company, but the city agreed not to erect waterworks of its own, and reserved the right to take,

condemn and pay for the works of the company at any time after the expiration of the contract. It was held by this court that the city might thus exclude itself from competition during the period of the contract, and of this feature of the contract the following pertinent language was used by Mr. Justice Brown, who delivered the opinion of the court:

"An agreement of this kind was a natural incident to the main purpose of the contract, to the power given to the city by its charter to provide a sufficient supply of water, and to grant the right to use the streets of the city for the purpose of laying water pipes to any persons or association of persons for a term not exceeding twenty-five years. In establishing a system of waterworks the company would necessarily incur a large expense in the construction of the power house and the laying of its pipes through the streets, and as the life of the contract was limited to twenty-five years it would naturally desire to protect itself from competition as far as possible, and would have a right to expect that at least the city would not itself enter into such competition.

"Cases are not infrequent where, under a general power to cause the streets of a city to be lighted or to furnish its inhabitants with a supply of water without limitation as to time, it has been held that the city has no right to grant an exclusive franchise for a period of years; but these cases do not touch upon the question how far the city, in the exercise of an undoubted power to make a particular contract, can hedge it about with limitations designed to do little more than bind the city to carry out the contract in good faith and with decent regard for the rights of the other party."

In the Walla Walla case the same general power to make the contract existed. There was an express provision against making an exclusive contract, and this court held that for the period mentioned in the contract, and as incident to the protection of the rights of the contractor, the city might exclude itself from competition. We think that case is decisive of the present one on this proposition.

We shall proceed to consider whether the language of the contract is such as to prevent the city, during the period named therein, from erecting a waterworks of its own.

The case of *Lehigh Water Company's Appeal*, (200 Pa. St. 515,) cited by counsel for appellant, is not in point. The act provided "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until the said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock." Of this grant Mr. Justice Paxon, who delivered the opinion of the court, observed:

"While the language from the act of 1874 above quoted would seem to favor the exclusive right claimed by the water company, a careful examination of clause 3 of section 34 shows that the legislature intended that the

right should be exclusive only as against other water companies, for immediately in this connection occur the words 'and no other company shall be incorporated for that purpose until the said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock.' The provision that another company shall not be incorporated was not intended to prohibit a city or borough from providing its citizens with pure water by means of works constructed by itself from money in its own treasury."

In considering this contract we are to remember the well-established rule in this court which requires grants of franchises and special privileges to be most strongly construed in favor of the public, and that where the privilege claimed is doubtful nothing is to be taken by mere implication as against public rights. This rule has been applied to a series of contracts in waterworks and lighting cases, and we have no disposition to detract from its force and effect. And unless the city has excluded itself in plain and explicit terms from competition with the Waterworks Company during the period of this contract it cannot be held to have done so by mere implication. The rule, as applied to waterworks contracts, was last announced in this court in *Knoxville Water Company* v. *Knoxville*, (200 U. S. 22,) decided at this term, citing previous cases.

The contract in the respect under consideration is found in section one of the ordinance, and undertakes to give to Bullock & Company, their associates, successors and assigns, the exclusive right and privilege, for the period of thirty years, from the time the ordinance takes effect, of erecting, maintaining and operating a system of waterworks, with certain privileges named, for the furnishing of a supply of good water to the city of Vicksburg and its inhabitants, for public and private use.

Without resorting to implication or inserting anything by way of intendment into this contract, it undertakes to give by its terms to Bullock & Company, their associates, successors and assigns, the exclusive right to erect, maintain and operate waterworks, for a definite term, to supply water for public and private use. These are the words of the contract and the question upon this branch of the case is, conceding the power of the city to exclude itself from competition with the grantee of these privileges during the period named, has it done so by the express terms used? It has contracted with the company in language which is unmistakable, that the rights and privileges named and granted shall be *exclusive*. Consistently with this grant, can the city submit the grantee to what may be the ruinous competition of a system of waterworks to be owned and managed by the city, to supply the needs, public and private, covered in the grant of privileges to the grantee? It needs no argument to demonstrate, as was pointed out in the Walla Walla case, that the competition of the city may be far more destructive than that of a private company. The city may conduct

the business without regard to the profit to be gained, as it may resort to public taxation to make up for losses. A private company would be compelled to meet the grantee upon different terms and would not likely conduct the business unless it could be made profitable. We cannot conceive how the right can be exclusive, and the city have the right at the same time to erect and maintain a system of waterworks, which may and probably would practically destroy the value of rights and privileges conferred in its grant. If the right is to be exclusive, as the city has contracted that it shall be, it cannot at the same time be shared with another, particularly so when such division of occupation is against the will of the one entitled to exercise the rights alone. It is difficult to conceive of words more apt to express the purpose that the company shall have the undivided occupancy of the field so far as the other contracting party is concerned.

The term "exclusive" is so plain that little additional light can be gained by resort to the lexicons. If we turn to the Century Dictionary we find it defined to mean "Appertaining to the subject alone; not including, admitting or pertaining to any other or others; undivided; sole; as, an exclusive right or privilege; exclusive jurisdiction." We think, therefore, it requires no resort to implication or intendment in order to give a construction to this phase of the contract; but, on the other hand, the city has provided and the company has accepted a grant which says in plain and apt words that it shall have an exclusive right, a sole and undivided privilege. To hold otherwise in our view would do violence to the plain words of the contract, and permit one of the contracting parties to destroy and defeat the enjoyment of a right which has been granted in plain and unmistakable terms. On the authority of the Walla Walla case, the city had the power to exclude itself for the term of this contract, giving the words used only the weight to which they are entitled, without strained or unusual construction, and we think it was distinctly agreed that for the term named the right of furnishing water to the inhabitants of Vicksburg under the terms of the ordinance was vested solely in the grantee, so far at least as the city's right to compete is concerned. Any other construction seems to us to ignore the language employed and to permit one of the parties to the contract to destroy its benefit to the other. We think the court below did not err in reaching this conclusion.

The court decreed as to a sewer, which the record discloses was originally a surface-water sewer, that the city should refrain from permitting future connections therewith for the conveyance of house sewage. The company complaining that this sewer entered into the source of supply above the intake of the waterworks, the court by a mandatory injunction required the city of Vicksburg to extend the sewer and construct an outlet therefor so as to discharge sewage into the Yazoo or Mississippi River, below the intake of the complainant, provided, if the city was unable to construct

such sewer within twelve months from date application might be made to the court for an extension of time. The error assigned in this behalf is as to the award of the mandatory injunction. We think the court erred in this respect and that it had no authority to issue a mandatory injunction requiring the city to construct a sewer, irrespective of the exercise of discretion vested by law in the municipal authorities to determine the practicability of the sewer ordered, the availability of taxation for the purpose, and the like matters; and we think that the exercise of this authority is primarily vested in the municipality and not in the courts.

We find no error in the decree of the Circuit Court enforcing the contract rights of the complainant and enjoining the city from erecting its own works during the term of the contract, but error in granting a mandatory injunction as to the sewer, and in that respect the decree will be modified, and, as so modified,

Affirmed.

Mr. Justice HARLAN, dissenting.

I cannot agree to the opinion and judgment in this case.

In my opinion, the city of Vicksburg had no authority, under the Constitution and laws of Mississippi, to give an exclusive right to any person or corporation to maintain a system of waterworks for the benefit of that city and its people.

But if I am wrong in this view, it ought not, in my judgment, to be held upon the present record that the city has, by ordinance or otherwise, precluded itself from establishing and maintaining, at its own expense, a system of waterworks for the benefit of its people. The contrary cannot be maintained, unless we hold that a municipal corporation may, by mere implication, bargain away its duty to protect the public health and the public safety as they are involved in supplying the people with sufficient water. Nothing can be more important or vital to any people than that they should be supplied with pure, wholesome water. And yet it is now held that it was competent for the city of Vicksburg, by mere implication, to so tie its hands that it cannot perform the duty which it owes in that regard to its people.

True copy.

Test:

Clerk Supreme Court, U. S.